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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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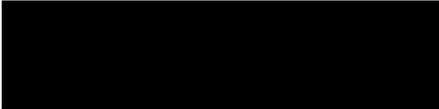
File: [Redacted] Office: TEXAS SERVICE CENTER

Date: AUG 03 2002

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a non-profit corporation that is engaged in international relief work, utilizing ocean-going vessels to provide medical services and spiritual counseling to impoverished port cities around the world. It seeks to employ the beneficiary as its vice president and chief executive officer. Accordingly, the petitioner requests classification of the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C). The director denied the petition after determining that the petition did not qualify under the statutory definition as "the beneficiary has not demonstrated that he intends to come to the United States."

On appeal, counsel submitted a brief in support of the petition. In addition, the petitioner submitted a letter affirming its intent to employ the beneficiary and a copy of the beneficiary's Form I-797, Notice of Action, indicating that the beneficiary has been approved as an L-1A nonimmigrant intracompany transferee.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation, or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

The petitioner is a non-profit corporation that was organized in Texas in 1978 and operates as the international headquarters and

United States parent company of multiple ocean-going vessels that are engaged in relief work. The petitioning organization claims approximately 700 employees and a gross annual income of over \$24,000,000. At the time of filing, the beneficiary was a vice president of the petitioning organization, a member of the [REDACTED] and the chief executive officer of the ship M/V [REDACTED]. As chief executive officer of one of the petitioner's primary hospital ships, the beneficiary directed a staff of 150 persons, including medical professionals and land-based personnel. The petitioner established that the [REDACTED] is owned and operated by [REDACTED], S.A., a Panamanian corporation that in turn is wholly-owned by the petitioner.

The issue in this proceeding is whether the petitioner intends to employ the beneficiary in the United States as a manager or executive.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. See 8 C.F.R. 204.5(j)(5).

After requesting additional evidence, the director denied the petition on April 26, 2001, stating:

While one could surmise that the beneficiary might wish periodically to come, as a member of the Council, to meet with the other CEOs and the Board, we assume he would be able to do so as a visitor for business. Since the beneficiary has not demonstrated that he intends to come to the United States, nor has the petitioner claimed he intends to come to the United States, for whatever reason, to stay and work, then we find that the petition does not qualify under the statutory [sic] definition of this classification.

On appeal, counsel for the petitioner asserts that the director erred when he based the decision on the petitioner's intent to employ the beneficiary in the United States. Counsel notes that the record contains letters from the petitioner which indicate that the petitioner fully intends to employ the beneficiary in the United States. Counsel also notes that prior to the denial of the immigrant petition, the petitioner obtained an L-1A nonimmigrant visa for the beneficiary so that he could commence working for the parent company in Lindale, Texas. In support of this claim, the petitioner submitted a copy of the approval notice for the beneficiary's L-1A nonimmigrant visa petition, which was approved

by the Service on June 7, 2000.

Counsel's assertion is persuasive. The director appears to presume that the beneficiary will not reside and work in the United States. Contrary to this presumption, the petitioner has submitted ample evidence of its intent to employ the beneficiary in the United States. Although the petitioner must intend to employ the beneficiary in the United States, there is no requirement that the beneficiary's services be confined to the United States. It is reasonable to expect that the employees of a non-profit international relief organization will spend a significant amount of time working outside of the United States.<sup>1</sup> Upon review, the petitioner has submitted sufficient evidence to explain and rebut the concerns of the director. The petitioner has established that the beneficiary will be employed in the United States in a managerial or executive capacity.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

**ORDER:** The appeal is sustained. The decision of the director dated April 26, 2001 is withdrawn.

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<sup>1</sup> Although the director's concerns may be premature, there are consequences for remaining outside the United States for long periods of time as a permanent resident. After the beneficiary attains lawful permanent resident status, he may use the INS Form I-551, Permanent Resident Card, to seek readmission to an unrelinquished lawful permanent residence after a temporary absence of less than one year. See 8 C.F.R. 211.1(a). Should the beneficiary depart the United States for greater than one year, the beneficiary will be deemed to have abandoned his permanent residence. See Matter of Huang, 19 I&N Dec. 749 (BIA 1988).