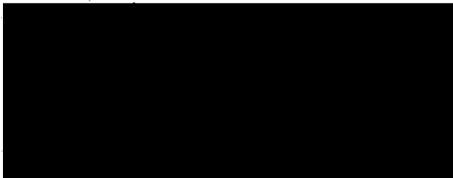


BH

U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street, N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, DC 20536



APR 14 2003

File: WAC 01 245 55078

Office: CALIFORNIA SERVICE CENTER

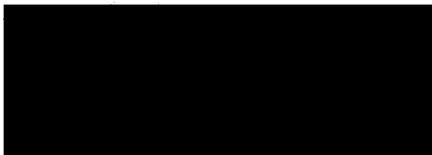
Date:

IN RE: Petitioner:  
Beneficiary:



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)

ON BEHALF OF PETITIONER:



**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director of the California Service Center denied the employment-based preference visa and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner seeks to employ the beneficiary in its Visalia, California office as its technical services manager. The petitioner, therefore, endeavors to classify 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 on the ground that the proffered position is not in an executive or managerial capacity.

On appeal, counsel submits a brief. Counsel states, in part, that the beneficiary would be responsible for managing an essential function and critical component within the petitioner's organization.

Section 203(b) of the Act, 8 U.S.C. § 1153(b), 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.

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, 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. 8 C.F.R. § 204.5(j)(1). 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 that indicates that the alien is to be employed in the United States in an executive or managerial capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The petitioner, [REDACTED] and the overseas entity, [REDACTED] are wholly owned subsidiaries of [REDACTED]

The petitioner states that it markets and sells chain saws and related power equipment products through a system of United States regional distributors.

According to the petitioner, the office where the beneficiary would be employed is located in Visalia, California [REDACTED]. The petitioner states that [REDACTED] is primarily a distribution center, but it also contains the technical and customer service departments as well as the company's training center. According to the petitioner, it employs 1,000 persons, including the beneficiary, who is currently occupying the proffered position as an L-1A nonimmigrant worker. The petitioner is offering to employ the beneficiary on a permanent basis at a salary of \$45,000 per year.

The issue to be discussed in this proceeding is whether the proffered position is in a managerial capacity. The Bureau notes that the petitioner is not seeking to classify the beneficiary as a multinational executive.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a

managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

The petitioner filed the I-140 petition with the California Service Center on May 18, 2001. At that time, the petitioner described the position of technical services manager as follows:

In this position, [the beneficiary] is responsible for managing and overseeing the relationship between the dealers and factory personnel to ensure communication and resolution of product service issues. This high-level managerial position is responsible for coordinating in-house and on-site training seminars for dealers and for developing and directing technical product planning and procedures on behalf of the Company, which is an essential function to [the petitioner's] complex operations.

In addition, the duties of this position include the following:

- ❖ Directing and coordinating regular interaction with branches, distributors, dealers and [the petitioner's] personnel to ensure that our products operate properly and meet established quality and reliability levels.
- ❖ Managing administration of [the petitioner's] warranty policies, including overseeing the processing of claims made by end users and dealers, enforcement of policies, and recording and tracking of warranty failures.
- ❖ Coordinating development and implementation of service training programs to branches, distributors and dealers.
- ❖ Communicating regularly with the Vice President of Sales and Marketing, Product Managers and Engineering/Quality Services Department in areas of product testing, product failures, new product development, and product quality.

The director was not persuaded that the proffered position was a managerial position based upon the petitioner's initial evidence. Therefore, on December 5, 2001, the director asked the petitioner to submit additional evidence to include the following:

- U.S. Business Organizational Chart: The submitted chart is deficient. Submit a copy of the U.S. company's line and block

organizational chart describing its managerial hierarchy and staffing levels. The chart should include the current name of all executives, managers, supervisors and number of employees within each department or subdivision. Clearly identify the beneficiary's position in the chart and list all employees under the beneficiary's supervision by name and job title. Also include a brief description of job duties, educational level, annual salaries/wages . . . and immigration status . . . for all employees under the beneficiary's supervision. Finally, explain the source of remuneration of all employees and explain if the employees are on salary, wage, or paid by commission. (Emphasis in original.)

- Duties in the U.S.: Submit a more detailed description of the beneficiary's duties in the United States. Be specific. Also, indicate [the] percentage of time spent in each of the listed duties.
- Form DE-6, Quarterly Wage Report: Submit copies of the U.S. company's California Employment Development Department (EDD) Form DE-6, Quarterly Wage Reports for all employees at the beneficiary's work site for the lasts four quarters that were accepted by the State of California. The forms should include the names, social security numbers and number of weeks worked for all employees.
- Payroll Summary: Submit copies of the U.S. company's payroll summary, W-2's and W-3's evidencing wages paid to employees at the beneficiary's worksite.

The petitioner submitted the requested information. Regarding the organizational chart, the petitioner submitted two charts; one chart pertained to the hierarchy of the petitioner's executive council, and the other chart pertained to the organizational hierarchy within [REDACTED]. According to the chart for Pacific Stahl, the position of technical services manager was the third highest position in [REDACTED] organizational hierarchy; it was under the supervision of the branch manager, a position that was supervised by the vice president of sales and marketing. The chart relating to the executive council indicated that the vice president of sales and marketing was the second highest position in the executive council, under the position of president. The organizational chart for [REDACTED] also indicated that the beneficiary would supervise one technical services specialist.

Regarding a more detailed job description for the beneficiary, the petitioner stated the following:

[The beneficiary] spends approximately 40% of his time managing and orverseeing [sic] technical liaison activities with dealer[s] on technical issues pertaining

to product service, parts usage, or related areas[,] and developing communications pertaining to common service problems. . . . Approximately 17% of [the beneficiary's] time is directed towards developing and conducting in-house and on-site training and service seminars for dealers as well as communicating new development from [the petitioner] or [REDACTED] with respect to service issues or part specifications. Roughly 5% of [the beneficiary's] time is spent overseeing review of warranty claims from dealers and processing claims for reimbursement or payment and maintaining records of transactions and reports to [the petitioner]. Another 5% of [the beneficiary's] time is allocated towards maintaining liaison with [the petitioner's] technical services to report common or unusual technical problems and to keep abreast of new developments or changes and coordinating service schools and training with technical expertise at [the petitioner]. [The beneficiary] spends about 5% of his time receiving customer service reports, calls, and complaints and researching solutions for specific problems and providing written or verbal solutions as required. Approximately 2% of [the beneficiary's] time is spent on overseeing the repair or inspection of stock, dealer, or customer owned equipment and approving/disapproving repairs and processing records and coordinating product rewords and testing procedures with [the petitioner]. Engineering/Quality Services; coordinating inventory of branch supply of products, parts, and accessories used for demonstrations at dealer, sales meetings, and training locations and ensuring work order and appearance of all items concerned; coordinating inventory of required tools and equipment and budgeting for and ordering new equipment when necessary; overseeing maintenance of files and records as they pertain to technical service activities[.]

The petitioner also submitted a job description for the individual under the beneficiary's supervision - the technical services specialist. According to the petitioner, this individual would spend 50 percent of his time liaising with dealers on technical issues, while his remaining duties would include performing tasks related to providing the petitioner's technical services.

The director denied the petition because the evidence failed to establish that the beneficiary would supervise professional employees or manage a function. According to the director:

The petitioner has not justified how it can justify a position where the job duties are to manage and oversea [sic] one person. It is not sound business principles to pay someone merely to ensure that another individual

is doing their [sic] job. As such one must assume that the beneficiary is also performing these duties. The beneficiary is essentially functioning as a technical liaison and processing warranty claims. He is not managing a department or subdivision of the company. He is not managing an essential function of the company through the work of others. He is performing the duties himself or doing nothing but watch[ing] [the technical services specialist] do his job. . . .

On appeal, counsel states that the director erred when determining that the beneficiary would not be employed in a managerial capacity. Counsel states, in part, that the beneficiary is responsible for managing an essential function and critical component within the petitioner's operations, that he exercises discretion over the day-to-day operations of the essential function, and that he functions at a senior level within the organizational hierarchy. Counsel asserts that the beneficiary's duties are unequivocally managerial.

Counsel presents a persuasive claim for classifying the proffered position as one that is primarily managerial. According to the organizational charts, the beneficiary would serve in the third highest position within the marketing and sales division's organizational hierarchy, which is also the fourth highest position within the petitioner's overall managerial hierarchy. Additionally, the beneficiary's job description indicates that he would direct and control the activities related to technical services, and that he would supervise one employee, who would perform the support tasks necessary for the petitioner to provide its technical services.

The petitioner has sufficiently demonstrated that the area of technical services is essential to its overall business operations. As the beneficiary would manage the functions of the this essential division, function at a senior level within the technical services division, and exercise discretion over the technical services' daily activities, the proffered position meets the definition of managerial capacity as that term is defined at section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). Accordingly, the petitioner has overcome the ground for denying the petition. The director's decision shall, therefore, be withdrawn.

It must be noted that the director based her decision on an improper standard. In the denial letter, the director stated "[i]t is not sound business principles to pay someone merely to ensure that another individual is doing their [sic] job. . . ." This comment is inappropriate.

The director should not hold a petitioner to her undefined and unsupported views of "sound business principles." The director

should instead focus on applying the statute and regulations to the facts presented by the record of proceeding. Although the Bureau must consider the reasonable needs of the petitioning business if staffing levels are considered as a factor, the director must articulate some reasonable basis for finding a petitioner's staff or structure to be unreasonable. Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). The fact that the beneficiary supervises one technical services specialist does not preclude the beneficiary from qualifying for classification under section 203(b)(1)(C) of the Act as a manager of an essential function.

In visa petition proceedings, 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 met its burden of establishing that the beneficiary merits classification for an employment-based preference visa as a multinational manager.

**ORDER:** The appeal is sustained. The petition is approved.

RECORDED  
MAY 5 5 2008