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

BH

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
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Washington, DC 20536



File: WAC 02 097 52758

Office: CALIFORNIA SERVICE CENTER

Date:

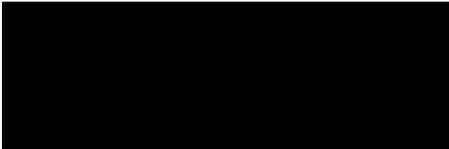
IN RE: Petitioner:  
Beneficiary:



DEC 18 2003

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 Citizenship and Immigration Services (CIS) 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 employment-based visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a successor to the beneficiary's previously sponsoring employer and is a division of a wholly owned subsidiary of a foreign entity. The petitioner was incorporated in the State of Delaware in 1959. It operates a laboratory that develops technologies for Internet Protocol devices and products in collaboration with other United States high-tech companies. It seeks to employ the beneficiary as the director of a specific laboratory that carries out research and development of satellite communications and related technology. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational manager. The director determined that the petitioner had not established that the beneficiary would be employed in an executive or managerial capacity for the petitioner.

On appeal, counsel contends that sufficient evidence was provided to establish that the beneficiary qualified as an executive and submits additional clarifying information.

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.

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 that 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).

The issue in this proceeding is whether the beneficiary will perform primarily executive and managerial duties for the petitioner.

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.

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

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

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision-making; and
- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner initially stated that the beneficiary would be responsible for managing a laboratory and supervising seven employees in engineering, technology alliance, and administration. The director requested additional evidence to support the petitioner's claim that the beneficiary's assignment would be in a primarily executive or managerial capacity.

The petitioner responded to the director's request but claims on appeal that it overlooked the request to provide a brief description of the duties of the beneficiary's subordinate employees. The director observed that CIS could not determine the nature of the beneficiary's subordinates' duties, and thus, could not conclude that the beneficiary's assignment was primarily in an executive or managerial capacity. The director also noted several discrepancies between the organizational chart supplied by the petitioner and the summary of the number and title of the beneficiary's subordinate employees.

On appeal, counsel for the petitioner states that the inconsistencies the director noted were due to changes which took place in the company during the delays in adjudication and response periods. Counsel provides a complete explanation of the status of the beneficiary's subordinates when the petition was filed. Counsel also notes that the request for the subordinates' job duties is contained in the middle of a paragraph requesting an organizational chart describing the managerial hierarchy and staffing levels. Counsel acknowledges that a more detailed description of the beneficiary's subordinates' duties could have aided the examiner but observes that the petition of the predecessor company had been approved. Counsel also notes that the petitioner's laboratory is staffed with only degreed individuals who garner significant annual wages. Counsel also provides detailed descriptions of the beneficiary's subordinates' job duties.

The director properly requested additional evidence detailing the beneficiary's subordinates' job duties. The director correctly points out that such information is often necessary to understand a beneficiary's role in an organization as well as that of the beneficiary's subordinates. However, in this matter the

petitioner has provided sufficient clarifying information on appeal to rectify any deficiencies or inconsistencies in the record.

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. Here, that burden has been met.

**ORDER:** The appeal is sustained.