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U.S. Department of Justice

Immigration and Naturalization Service

(B4)

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: 

Office: NEBRASKA SERVICE CENTER

Date:

JAN 10 2003

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)

IN BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director of the Nebraska Service Center denied the employment-based preference visa and affirmed his decision in a subsequent motion to reconsider. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a provider of integrated communications solutions and embedded electronic solutions. It seeks to employ the beneficiary as a lead software engineer and, therefore, endeavors to classify the beneficiary as a multinational 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 basis that the proffered position does not entail primarily managerial duties.

On appeal, counsel submits a brief. Counsel states, in part, that the beneficiary serves at a very high level within the petitioner's hierarchy of technical employees.

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.

In the initial petition filing, the petitioner described itself as a global leader in integrated communications solutions and embedded electronic solutions that employed more than 139,000 people worldwide and had a gross annual income of \$27.9 billion. According to the petitioner, the beneficiary had been employed as a lead software engineer since 1999 in L-1A nonimmigrant status, and it was seeking to permanently employ the beneficiary in the same position. The proffered position, which the beneficiary was currently occupying, was described as follows:

In his current position of Lead Software Engineer, [the beneficiary] is responsible for managing the consistency and integrity of the IX CDMA cellular system architecture for [the petitioner's] product line of CDMA cellular telephone systems. [The beneficiary] is responsible for generating system architecture requirements. . . . [The beneficiary's] job also includes innovation and new product concept development and the design and specification of [the petitioner's] new products. [The beneficiary] is also responsible for participating in long range planning and establishing intellectual property for [the petitioner].

The director found that the petitioner's evidence did not establish the primarily managerial nature of the proffered position. The director, therefore, requested the petitioner to submit a letter from an authorized official of the petitioner's operations that described the beneficiary's intended employment in detail. In response, the petitioner described the proffered position in more detail:

As the Lead Software Engineer within the CDMA development organization of [the petitioner's] cellular telephone product line, [the beneficiary] serves as one of four engineering professional managers responsible for managing the development and implementation of the CDMA architecture for [the petitioner's] cellular phones. . . . [The beneficiary] is one of four professionals who manage the technical component of the CDMA technology development and implementation. In this position, [the beneficiary] manages all aspects of the technical development of the CDMA technology organization. The CDMA technology worldwide organization consists of in excess of 2000 development engineers worldwide who are involved in the development and implementation of the CDMA technology. . . . [The beneficiary] has management responsibility for this worldwide population of CDMA engineers who are divided into twelve subsystems of professional CDMA development activity. Within the CDMA technology manager group of four professionals, [the beneficiary] is directly responsible for managing the internet protocol (IP) technology and the underlying transport architecture of the DCDMA Radio Access Network. . . . Currently, [the beneficiary's] group is involved in developing the next generation of CDMA technology, which will provide access to the internet from the cellular telephone.

As a member of the CDMA functional management team, [the beneficiary] is directly reportable to [the petitioner's] Director of Product Line, who is, in turn,

responsible to the Vice President, Group CDMA Division. This Vice President is responsible to the Senior Vice President and General Manager of [the petitioner's] Global Telephone Systems Section, who is responsible to the President of [the petitioner's] Product Group and CEO of the company.

The CDMA management function for which [the beneficiary] is responsible includes the following:

- maintaining CDMA system architecture;
- identify and resolve issues relating to CDMA systems architecture;
- identification of global technology issues, group issues-new markets;
- guiding global CDMA architecture development.

The petitioner also submitted an organizational chart that showed the beneficiary's position within the organizational hierarchy.

The director found that the proffered position was not managerial in nature, and he denied the petition. The director concluded that the beneficiary was "a highly skilled software engineer whose primary services are assisting the petitioner in developing products." The director did not find that the beneficiary managed an essential function or worked in a senior level position within the organizational hierarchy.

Counsel appealed the director's decision and asked that the director treat the appeal as a motion to reconsider. Counsel stated that the beneficiary manages an essential function of the petitioner, namely, CDMA technology. Counsel also submitted copies of unpublished Administrative Appeals Office (AAO) decisions that related to the issue in dispute between the director and the petitioner. The director affirmed his decision to deny the petition, noting that the unpublished decisions of the AAO were not binding on Service officers. The director acknowledged that the beneficiary coordinated research work; however, he concluded that such coordination was not at the senior level of the organization's hierarchy.

On appeal, counsel states that the petitioner is organized into a two-sided hierarchy, one of which is the technical side. Counsel maintains that technical employees perform various functions from hands-on research to corporate policy decision-making. According to counsel, the beneficiary serves at a high level within the petitioner's technical hierarchy, as he is one of four management level software engineers who establishes technical priorities and makes technical decisions that drive the research and development of CDMA technology. Counsel notes that the beneficiary does not supervise any employees; however, counsel states that the

beneficiary is responsible for issuing policy decisions that drive the work of 2,000 of the petitioner's worldwide development engineers.

Counsel maintains that the director mischaracterized the beneficiary's role with the petitioner and misrepresented the beneficiary's importance and level of responsibility.

Pursuant to 8 C.F.R. 204.5(j)(2):

*Managerial capacity* means an assignment within an organization in which the employee primarily:

- (A) Manages the organization, or a department, subdivision, function, or component of the organization;
- (B) 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;
- (C) 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
- (D) Exercises direction over the day-to-day operations of the activity or function for which the employee has authority.

The record contains sufficient evidence of the beneficiary's employment in a primarily managerial capacity. The beneficiary manages an essential component of the petitioner's operations, which is CDMA technology development and implementation. While the beneficiary does not directly supervise subordinate personnel, he directs the day-to-day research and development activities of more than 2,000 professional engineers through policy directives. The beneficiary also functions at a senior level within the organizational hierarchy of the CDMA technology program. The petitioner has portrayed the proffered position as one that primarily involves the management of technology development within a specialized field (CDMA technology). As such, the proffered position can be classified as primarily managerial in nature, and the petitioner has overcome the objection of the director to the approval of the petition.

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, the petitioner has met that burden.

**ORDER:** The director's decision of June 30, 2001 is withdrawn. The petition is approved.