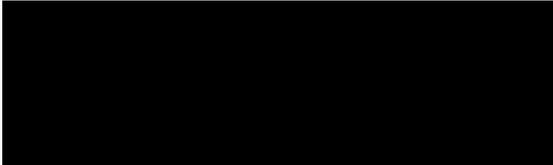




U.S. Citizenship  
and Immigration  
Services

BA



FILE: WAC 02 286 54446 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



SEP 23 2004

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)

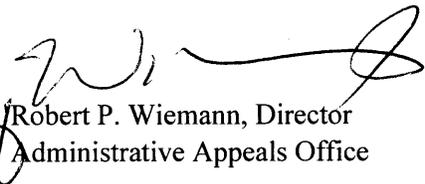
ON BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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**DISCUSSION:** The director denied the employment-based preference visa petition 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 is a California corporation that seeks to employ the beneficiary as its production 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 because: (1) the proffered position in the United States is not in an executive or managerial capacity; and (2) the petitioner is merely an agent/office and had not been doing business for at least one year at the time the petition was filed.

On appeal, counsel submits a brief.

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 avers that it: (1) is the parent company of Santomi S.A. de C.V. (SANTOMI), which is located in Mexico and a maquiladora plant; (2) sells and distributes wire harnesses and other appliance components that are manufactured at SANTOMI; and (3) employs seven persons in its U.S. operations and 350 persons in SANTOMI. The beneficiary is currently occupying the proffered position as an intracompany transferee (L-1A), and the petitioner is seeking to employ the beneficiary permanently at a salary of \$44,000 per year. The AAO takes administrative notice that a maquiladora, or "twin plant," is generally a manufacturing facility in Mexico that imports raw materials or components for processing or assembly in Mexico, using Mexican labor, and then re-exports the finished products to the United States. *See generally*, U.S. Government

Accountability Office, *Mexico's Maquiladora Decline Affects U.S.-Mexico Border Communities and Trade*, GAO Report 03-891 (2003).

The first issue to be discussed in this proceeding is whether the beneficiary's proposed employment with the U.S. entity is in a managerial or executive capacity.

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.

When filing the I-140 petition, the petitioner described the beneficiary's job as follows:

As Production Manager, the beneficiary has been and will continue to coordinate the Petitioner's manufacturing, sales, components and raw materials purchasing in order to maximize production efficiency. He will plan and develop consistent production schedules, policies and goals and implement these goals through subordinate managerial personnel, exercising discretionary authority to make personnel decisions including hiring, firing and promotions of managers, production staff and technical workers. The Beneficiary will continue to oversee the implementation of the Petitioner's international organization's policies and goals as well as participate in planning long-term goals, policies and procedures specific to its domestic market. He will direct and coordinate the Petitioner's company's various production functions, including purchasing of raw materials, pace of production, modifications to production quantity and/or quality through the subordinate management of its manufacturing subsidiary in Tijuana, Mexico. He will ensure the effective implementation of necessary policies and procedures and continue to liaise with major customers in the United States to meet quality standards set by the industry and per customer specifications and requirements.

The director was not satisfied with the initial evidence presented. Therefore, in a January 28, 2003 request for evidence (RFE), the director asked the petitioner to submit evidence relating to the beneficiary's proposed duties, including organizational charts for the petitioner and SANTOMI, a detailed description of the beneficiary's actual job responsibilities, and California Form DE-6, Quarterly Wage and Withholding Reports. The director asked the petitioner to specifically explain how the beneficiary's job meets the definition of managerial capacity.

The petitioner submitted the requested evidence. The petitioner stated that the beneficiary will directly supervise four managers – production/engineering, planning, material control, and human resources - and that he will be responsible for SANTOMI's entire manufacturing operations. The petitioner stated that the beneficiary will be ultimately responsible for 350 employees and will report directly to the president. The petitioner elaborated in detail on its earlier job description for the beneficiary; however, the AAO will not repeat it here as it is part of the record.

The director denied the petition, in part, because the proffered position is not in a managerial or executive capacity. The director stated that the beneficiary would not be a manager or an executive of the U.S. entity because his "subordinate employees are all in Mexico where the actual work is being done." The director questioned how the beneficiary could analyze production methods of a Mexican facility if he is stationed in the United States and concluded that "[i]t is not reasonable for the U.S. company to require a Production Manager to oversee operations of a subsidiary's operations located in another country." The director opined further that a lower level manager of the Mexican facility would need to be "on site" in order to effectively manage the operations.

On appeal, counsel asserts that the proffered position is in a managerial capacity. Counsel notes that the petitioner and the Mexican facility are part of the maquiladora program and, therefore, the beneficiary's management of the Mexican operations should be considered when determining his employment in a managerial capacity. Counsel notes that the organizational structure shows clearly that there are subordinate managers under the beneficiary's supervision who perform the daily supervisory duties. Counsel also questions the director's finding that the beneficiary would be involved in producing products when the evidence shows that the actual production is done by more than 300 employees.

Counsel's statements on appeal are persuasive. The evidence in the record establishes that the proffered position is in a managerial capacity.

In finding that the proffered position is not managerial, the director refused to consider the beneficiary's primary responsibility of overseeing and managing the Mexican production facility. The AAO notes that the statutory definition of managerial capacity refers to an assignment within an organization in which the employee manages the organization or an essential function. The term "organization" is defined at section 101(a)(28) of the Act, 8 U.S.C. § 1101(a)(28), as follows:

The term 'organization' means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

The statutory definition of an organization would not reasonably include a foreign corporation that is an entity separate and distinct from the petitioning organization. Here, however, the foreign corporation, SANTOMI, is not separate and distinct from the petitioner. The record contains documentary evidence that the petitioner is the parent company of SANTOMI; the petitioner established SANTOMI as a maquiladora facility as permitted under both United States and Mexican law. Accordingly, the United States entity and the facility in Mexico are permanently associated through ownership. The beneficiary's duties for SANTOMI on behalf of the petitioner must, therefore, be considered whether determining if the proffered position is in a managerial capacity.

As stated previously, the petitioner is required to furnish a job offer in the form of a statement that clearly describes the duties to be performed by the beneficiary. 8 C.F.R. § 204.5(j)(5). Based upon the beneficiary's job description, the organizational charts, and the petitioner's descriptions of its operations, there is sufficient evidence to show that the beneficiary would primarily manage the operations of the Mexican facility through subordinate managers, and that he would have discretionary authority over personnel actions as well as the daily production operations. Accordingly, the position offered to the beneficiary is in a managerial capacity, and director's decision to deny the petition on this basis shall be withdrawn.

The second and final issue to be discussed in this proceeding is whether the petitioner had been doing business for at least one year at the time it filed the I-140 petition. 8 C.F.R. § 204.5(j)(3)(i)(D). The term *doing business* is defined as "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office." 8 C.F.R. § 204.5(j)(2).

When filing the I-140 petition, the petitioner submitted a copy of its 2000 federal income tax return (Form 1120), which showed gross sales/receipts in excess of \$8 million. The director was not satisfied with the initial evidence and, therefore, he requested additional documentation, including the petitioner's state income tax returns, and information about its business premises. The petitioner complied with the director's request; nevertheless, the director denied the petition, in part, because the petitioner was an office that did not regularly, systematically and continuously provide goods and/or services. The director stated that there is no evidence that the petitioner manufactures and sells its goods to any company in the United States or that it is anything but "an agent between the parent and another affiliated branch of the organization (customer) in Mexico."

On appeal, counsel once again explains that the Mexican subsidiary is a maquiladora plant. Counsel states that the petitioner provides its services to SANTOMI and records all of SANTOMI's sales as income on its federal income tax returns. Counsel asserts that these facts indicate that the petitioner has been doing business as that term is defined in the regulations.

The AAO concurs with counsel and finds that the director failed to evaluate the evidence properly. The record contains ample evidence to show that the petitioner regularly, systematically and continuously provided goods and its services for at least one year prior to the filing of the petition. There is no requirement, as the director claims, for the petitioner to sell goods to a company that has a manufacturing facility in the United States. Accordingly, the director's comments regarding this issue shall also be withdrawn.

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 established that the beneficiary merits classification as a multinational manager pursuant to section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b), and has met its burden.

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