



U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

AUG 23 2005

WAC 02 065 52153

IN RE:

Petitioner:



Beneficiary:

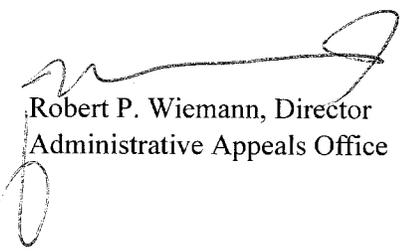
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



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

DISCUSSION: The Director, California Service Center, initially approved the employment-based petition. Upon subsequent review, the director issued a notice of intent to revoke approval, and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a corporation organized in the State of California in 1991. It provides air and ocean freight forwarding, bulk imports, express cargo, storage, inventory and redistribution of cargo, inland trucking, pickup and delivery of cargo, and container loading and unloading. It seeks to employ the beneficiary as its president. 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 executive or manager.

The director approved the petition on September 12, 2002. On October 25, 2002, the director issued a notice of intent to revoke questioning the beneficiary's eligibility for this visa classification on four issues. The director determined that the petitioner had not established: (1) that the beneficiary would be employed in the United States in a managerial or executive capacity; (2) a qualifying relationship with the beneficiary's foreign employer; (3) its ability to pay the beneficiary the proffered wage; or, (4) that it was doing business in the United States.

The petitioner provided rebuttal evidence. The director's decision does not address any deficiencies in the record regarding the issues of the petitioner's qualifying relationship, its ability to pay the proffered wage, or that it was doing business in the United States. However, the director ultimately determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity for the United States entity.

On appeal, counsel for the petitioner asserts that the beneficiary's duties satisfy the definition of executive capacity and of managerial capacity.

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 be employed in a primarily executive or managerial capacity for the United States entity.

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 director has recited the petitioner's descriptions of the beneficiary's duties in his April 7, 2004 decision; thus, the descriptions will not be repeated here.

Upon review of the totality of the record, the record demonstrates that the beneficiary will perform in a primarily managerial capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Although the description of the beneficiary's duties contains generalities, the overall description coupled with the petitioner's organizational structure is sufficient to establish that the beneficiary's role is primarily managerial. Counsel, on appeal, has clarified the previous descriptions of the beneficiary's duties provided. The totality of the record shows that the beneficiary not only has the requisite authority, but that a majority of his duties relate to operational or policy management, not to the supervision of lower level employees or other involvement in the operational activities of the company.

The record is sufficient to establish that the beneficiary plans, organizes, directs, and controls the organization's major functions and works through other employees to achieve the organization's goals and that the duties of the beneficiary's subordinates correspond to their placement in the organization's structural hierarchy. Contrary to the director's conclusion, when viewed objectively, it is reasonable to believe that with the petitioner's organizational structure, the beneficiary does not assist with the petitioner's day-to-day non-supervisory duties, but rather performs primarily the high-level responsibilities that are specified in the definition of managerial capacity.

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. Accordingly, the director's decision to revoke approval of the petition, dated April 7, 2004, is withdrawn.

ORDER: The appeal is sustained.