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FILE: WAC 03 094 51910 Office: CALIFORNIA SERVICE CENTER Date: AUG 23 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

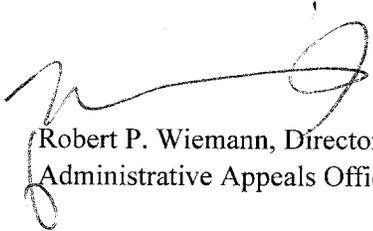
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, denied the employment-based 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 July 2000. It distributes software products. It seeks to employ the beneficiary as its president/general manager. 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 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 director erred when determining that the beneficiary did not satisfy the criteria of a manager.

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 managerial capacity for the United States entity. The petitioner does not claim that the beneficiary performs primarily executive duties.

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.

In a January 28, 2003 letter appended to the petition, the petitioner stated:

As the President and General Manager of our company, [the beneficiary] will continue to direct and manage all of the business affairs involving the day to day operations of FarStone USA. Such tasks include planning, developing and establishing policies and objectives of the company, preparing and implementing marketing strategy, coordinate function and operations between divisions and departments, establish responsibilities and procedures for attaining objectives, and overseeing personnel and budgets. In addition, [the beneficiary] will oversee the direction and coordination of activities with regards to operations, development, and sales. [The beneficiary] will continue to lead staff to identify and develop new technologies and services related to computer solutions in the U.S. and Asia. He is in charge of the success of FarStone USA. He will have complete authority to hire and fire all staff.

The petitioner also provided a list of its employees. The list includes, in addition to the beneficiary, a director, four account executives, a product manager, a technical support person, an accounting person, a sales

assistant, an OEM (Original Equipment Manufacturer) sales executive, and a sales director for Europe.

On August 9, 2003, the director requested: (1) a more detailed description of the beneficiary's duties in the United States; (2) the petitioner's California Forms DE-6, Quarterly Wage Reports, for the fourth quarter of 2002 and the first quarter of 2003; and, (3) a copy of the petitioner's organizational chart describing its managerial hierarchy and staffing levels, as of the date of filing the petition, February 3, 2003. The director requested that the chart include the names of all executives, managers, supervisors, and number of employees within each department or subdivision. The director also requested a brief description of job duties, educational levels, salaries/wages for all employees under the beneficiary's supervision.

In an October 29, 2003 response, the beneficiary provided a more detailed description of his duties, including the time he spent on the various duties as well as brief descriptions of each employee's job duties listed on the chart. The petitioner's California Form DE-6 confirmed the employment of the U.S. employees.

The petitioner also provided its organizational chart showing the beneficiary directly supervising a U.S. director, a Paris office director, a product manager, and an accountant. The chart shows that the U.S. director supervises three account executives, two of whom supervise two sales associates; the Paris office director supervises an account executive, who in turn supervises a sales assistant; and the product manager who supervises a technical support person.

The director determined that: (1) the description of the beneficiary's job duties did not establish that the beneficiary met the criteria outlined in the definition of executive or managerial capacity; (2) it was reasonable to believe that with the petitioner's organizational structure, the beneficiary would assist with the day-to-day non-supervisory duties; (3) the petitioner had not established the nature of its business would require three manager/executives; (4) the beneficiary is essentially a first-line manager who would not be supervising managerial or professional employees; and (5) the beneficiary did not qualify as a functional manager as he would be involved in performing routine operational activities rather than managing a function.

On appeal, counsel for the petitioner asserts that the beneficiary manages the petitioner because he determines how his subordinates market the petitioner's product, determines the companies with which the petitioner's managers and professional staff communicates, determines product prices, decides the channels of distribution, decides which contracts to approve and sign, and decides who will perform the supporting duties in each division.

Counsel contends that the beneficiary supervises both subordinate managers and professionals. Counsel notes that an individual who functions as a supervisor or manager need not also occupy a professional position. Counsel also claims that the duties of the marketing and product managers and the OEM and Europe Division directors are sufficiently complex to require a bachelor's degree and thus those positions are professional positions.

Counsel avers that the beneficiary has the authority to hire, fire, and take personnel actions and submits further documentation to substantiate his authority. Counsel asserts that the beneficiary exercises discretion

over the day-to-day operations of the organization and submits examples demonstrating the beneficiary's authority to instruct subordinates.

Upon review, 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. The totality of the record shows that the beneficiary not only has 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 work through other employees to achieve the organization's goals and that the duties of the beneficiary's subordinates correspond to their placement in an 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 managerial definition.

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 is withdrawn and the petition is approved.

ORDER: The appeal is sustained.