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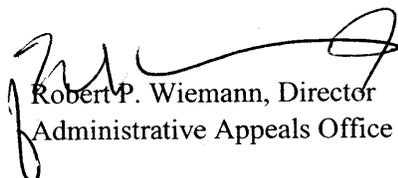
IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 an organization established in the State of California in July 1998. It imports and wholesales wood products. 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 determined that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity for the United States entity.

On appeal, counsel for the petitioner submits a brief in response to the director's decision.

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 petitioner has established that the beneficiary will be employed in an 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.

In a November 5, 2002 letter appended to the petition, counsel for the petitioner provided a general description of the beneficiary's proposed duties for the petitioner. Counsel also provided the petitioner's organizational chart showing the petitioner employed 21 personnel subordinate to the beneficiary's position. The chart shows a general manager/chief operating officer directly subordinate to the beneficiary's position. The chief operating officer supervises four department managers, who in turn, supervise thirteen staff employees. The petitioner also provided a current list of employees, their wages, positions, and hire dates in support of the organizational chart.

On April 17, 2003 the director requested, among other items: a more detailed description of the beneficiary's duties for the United States petitioner; and the petitioner's California Forms DE-6, Employer's Quarterly Wage Report, for the previous two quarters.

In response, the petitioner provided a more expansive list of the beneficiary's proposed duties and the percentage of time the beneficiary would spend performing those duties. The petitioner also provided its California Form DE-6 for the quarter in which the petition was filed. The fourth quarter-2002 California Form DE-6 confirmed the employment of the individuals subordinate to the beneficiary listed on the petitioner's organizational chart, except for one individual employed as a warehouse worker.

The director observed that the beneficiary's job description paraphrased elements of the statutory definition of executive capacity and determined that the job description did not establish that the beneficiary would be employed in an executive capacity. The director also considered the petitioner's organizational structure and determined that: (1) the petitioner had not demonstrated the necessity of the number of managers and executives employed; (2) with the petitioner's organizational structure and payroll record, it would be reasonable to believe that the beneficiary would be assisting with the petitioner's day-to-day non-supervisory duties; (3) the beneficiary would be, in essence, a first-line manager of non-managerial and non-professional employees; and (4) the petitioner had not shown that the beneficiary would manage or direct the management of a department, subdivision, function, or component of the organization, but instead would perform routine operational activities of the entity.

On appeal, counsel for the petitioner contends that the director failed to adequately consider the 21 employees including lower-level managers and a professional accountant subordinate to the beneficiary's position. Counsel questions the director's summary conclusion that the beneficiary would be a first-line manager over non-managerial or non-professional employees. Counsel references the evidence previously submitted with the petition and in response to the director's request for evidence that substantiated the petitioner's employment of the individuals on its organizational chart.

Counsel's assertions are persuasive. The petitioner has provided sufficient evidence to establish that the beneficiary's position will be responsible for primarily managerial duties and that the petitioner's lower-level managers, supervisors, and a professional will carry out the petitioner's operational and administrative tasks. Although the petitioner's description of the beneficiary's proposed duties was not completely comprehensive, the evidence in the record establishes that the petitioner is sufficiently complex to require the services of the beneficiary as a manager. The petitioner has provided sufficient evidence to overcome the director's decision in this matter.

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.