



U.S. Citizenship  
and Immigration  
Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

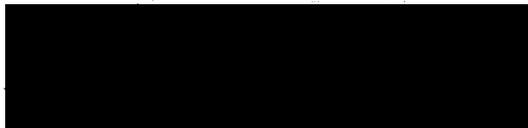
**PUBLIC COPY**



B4

FILE: WAC 03 059 52742 Office: CALIFORNIA SERVICE CENTER Date: NOV 10 2005

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, denied the employment-based visa petition. The petitioner filed an appeal with the Administrative Appeals Office (AAO), which the AAO dismissed. The matter is again before the AAO on motion to reopen and reconsider the prior decisions of the director and the AAO. The AAO will grant the motion and the prior decisions of the director and AAO will be withdrawn. The petition will be approved

The petitioner filed the instant immigrant petition seeking to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is organized under the laws of the State of California that is engaged in the production and sale of wire harnesses and other components for appliances. The petitioner seeks to employ the beneficiary as its quality control manager.

The director denied the petition concluding that the petitioner had not established that: (1) it had been doing business in the United States for one year prior to the filing of the petition, or (2) that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

In an appeal filed on January 21, 2004, counsel challenged the director's findings, stating that the petitioning entity is "performing [business] transactions" in the United States, and therefore is doing business. Counsel also claimed that the beneficiary would be employed in the United States in a primarily qualifying capacity. Counsel submitted a brief in support of the allegations on appeal.

In a decision dated February 15, 2005, the AAO affirmed the director's decision and dismissed the appeal based on the findings noted by the director.

On motion, counsel contends that the AAO misinterpreted and misapplied the law to the instant petition, made "spurious conclusions" pertaining to the evidence submitted and failed to rationally connect the facts and its conclusions. Counsel submits documentary evidence in the form of sales invoices as evidence of the petitioner's prior business operations. Counsel also contends that the AAO disregarded the beneficiary's "primary responsibility" of managing the personnel and activities performed by the petitioner's production facility in Mexico. Counsel submits a brief in support of the motion to reopen and reconsider.

The regulation at 8 C.F.R. § 103.5(a)(2) provides that a motion to reopen "must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

The regulation at § 103.5(a)(3) states:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [Citizenship and Immigration Services] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial 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 or 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 which 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.

The AAO will first consider whether the petitioner was doing business in the United States for a year prior to the filing of the petition.

The regulation at section 204.5(j) defines the phrase "doing business" as:

[T]he 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.

On motion, counsel notes that the AAO based its denial of the petition on the absence of documentary evidence, particularly invoices documenting the petitioner's sales prior to the filing of the petition on December 12, 2002. Counsel emphasizes that the petitioner cannot be penalized for failing to provide sales invoices that were not previously requested by the director. Counsel submits "a sampling" of invoices from the petitioner to its customers during the year 2002, which counsel states show the petitioner's business transactions prior to the filing of the petition. As additional proof of its operations during 2002, counsel submitted the petitioner's utilities and insurance statements, the renewal of its business license and automobile insurance, a statement of its group life insurance policy, as well as proof of payment for the previously mentioned bills. Counsel claims that CIS' denial of the petition based on the absence of documents that the petitioner did not have the opportunity to submit would be "arbitrary, capricious and an abuse of discretion."

Counsel also contends that the documentation previously submitted was sufficient to represent the petitioner's business operations in the United States for the appropriate time period prior to filing the petition. Counsel notes that the petitioner's 2001 federal tax return and financial statements submitted at the time the petition was filed, as well as the petitioner's 1999 federal tax return and 2002 financial statements subsequently requested by the director, demonstrate that the petitioner "was engaged in the manufacture and wholesale of

electrical products that resulted in gross sales of over \$8 million." Counsel contends that the petitioner's tax returns "serve as probative evidence of not only tax information, but also business activities."

In addition, counsel claims that the AAO reviewed the appeal under a more stringent standard rather than the proper standard of "preponderance of the evidence." Counsel contends that the AAO's decision, which includes such statements as "affirmatively determine" and prove "with any degree of certainty" suggest that the AAO applied a higher standard of review.<sup>1</sup>

Upon review, the petitioner has demonstrated that it had been doing business in the United States for at least one year prior to the filing of the petition. On motion, the petitioner provided numerous invoices for products sold by the petitioner during July 2002, as well as goods purchased by the petitioning entity from November 2001 through October 2002. This evidence in conjunction with the petitioner's 2002 utilities and insurance statements, 2002 business license and insurance renewals, and particularly, its proof of payment for each, as well as the petitioner's 2002 financial statements, which reflect a net profit of \$ 359,738.20, demonstrate that the petitioner was engaged as a wholesaler in the United States, as claimed by the petitioner in its December 10, 2002 letter submitted with the immigrant petition. Collectively, the additional evidence submitted on motion establishes the petitioner's business operations during the year prior to filing the immigrant petition. As a result, the director's decision with regard to this issue will be withdrawn.

The AAO will next consider whether the beneficiary would be employed by the United States entity in a primarily 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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

---

<sup>1</sup> In its February 15, 2005 decision, the AAO noted its inability to "affirmatively conclude" that the beneficiary was employed in a primarily qualifying capacity, an issue unrelated to the present issue of doing business.

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.

On motion, counsel claims that the AAO failed to consider the beneficiary's "primary responsibility of overseeing and managing activities and personnel at the Petitioner's [subsidiary] Mexican production facility." 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). Counsel contends that the director's disregard of the job duties performed by the beneficiary in the foreign entity while employed in the United States is in contrast to the "plain language" of the statutory definition of "organization."

Counsel further explains that the beneficiary's task of overseeing the activities of the petitioner's Mexican *maquiladora* subsidiary supports the beneficiary's employment in a primarily managerial capacity. Counsel notes that the close proximity of the foreign and United States corporate offices, which are approximately twenty miles apart, allows for the beneficiary to supervise the daily activities of the Mexican personnel and implement the foreign company's policies and procedures. Counsel challenges that this "valid cross-border business situation" dispels objections raised by the AAO with regard to the beneficiary's employment capacity.

On review, counsel's statements on motion 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 and the *maquiladora* "twin plant" system of operation. 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, and counsel's supporting argument on motion, 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 the director's decision to deny the petition on this basis shall be withdrawn.

Finally, counsel claims on motion that the AAO applied a higher standard to its review of the appeal than the "preponderance of the evidence" standard when it adjudicated the petitioner's appeal. The AAO recognizes that its prior decision included the phrases "affirmatively conclude" and "with any degree of certainty." Despite this language, upon review of the previous decision, it is apparent that the AAO was not holding the petitioner to a higher standard. Rather, the AAO was expressing the ambiguity that it perceived in the beneficiary's claimed managerial or executive job duties associated with the Mexican facility, particularly in light of the fact that the *maquiladora* arrangement was not discussed on appeal. The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). On motion, the petitioner has satisfied that burden.

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 or executive pursuant to section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b), and has met its burden.

**ORDER:** The petition is approved.