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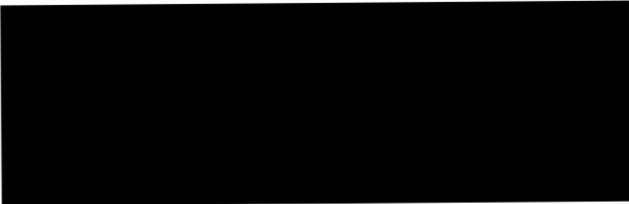
Date: OCT 24 2006

IN RE: Petitioner:
Beneficiary:



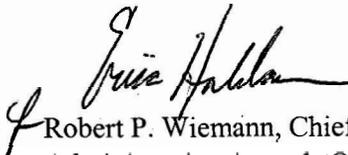
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 petition will be approved.

The petitioner is a corporation organized in the State of Illinois in August 1994. The petitioner develops advanced computer technologies and state of the art software for banking and financial institutions. It seeks to employ the beneficiary as its vice-president and chief information officer. 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 had been employed in a managerial or executive capacity for the foreign entity prior to entering the United States or would be employed in a primarily managerial or executive capacity for the United States petitioner.

On appeal, counsel for the petitioner asserts: that the director failed to consider the beneficiary's specific job description or the specific job descriptions and qualifications of the beneficiary's subordinate professional employees; that the director disregarded the specific explanation and evidence of the beneficiary's managerial duties performed remotely; and that the director dismissed the documentation submitted, rather than requesting explanations of documents the director did not understand.

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 first issue in this proceeding is whether the beneficiary will be employed in a managerial or executive 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

1. 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 letter dated January 5, 2003, appended to the petition, the petitioner indicated that the beneficiary as vice-president and chief information officer would:

Direct the software systems and services operations of [the petitioner], such as research and development and software engineering and production activities of onsite and remote software development and implementation teams with regard to [the petitioner's] introduction of existing and future software products and services in the United States and global markets

* * *

Approve project documentation and analyses of activities, costs, operations, as well as data forecast to determine progress toward stated goals and objectives;

Approve the budget and appropriate software purchase and other project expenditures;

Oversee quality assurance through subordinate supervisors to establish appropriate criteria;

Motivate and guide project teams through the developmental lifecycle;

Liaise with [the petitioner's] Business Managers and clients to ensure that the finished products serve the clients' banking and financial technology needs;

As a member of the company's Executive Board, work with the President and Chief Operational Officer in formulating and administering corporate policies and developing long-range goals and objectives.

The petitioner also provided its organizational chart, job descriptions, job locations, and educational levels of employees subordinate to the beneficiary, and press releases concerning the petitioner's influence in the banking business in Russia.

On December 29, 2004, the director requested a more detailed description of the beneficiary's duties, noting that the petitioner had used broad terminology when describing the beneficiary's duties and had not specifically defined the beneficiary's actual duties. The director also observed that the petitioner had not explained how the beneficiary would oversee employees located in Russia from the beneficiary's United States location.

On March 15, 2005, the petitioner provided a detailed description of the beneficiary's duties but also used some general terminology in the description. The petitioner provided comprehensive examples of the beneficiary's work and work product. The lengthy descriptions and examples will not be repeated here. The petitioner allocated the beneficiary's time to his specific duties and explained the beneficiary's oversight of the petitioner's employees in Russia.

On June 1, 2005, the director denied the petition, determining that the information submitted in support of the beneficiary's position as a managerial or executive employee was insufficient. On appeal, counsel for the petitioner disagrees with the director's decision and asserts that the director failed to consider the petitioner's documentation and explanations in response to the director's request for further evidence, as well as evidence initially submitted with the petition. Counsel submits two advisory opinions in support of the appeal.

Counsel's assertions are persuasive. Upon review of the totality of the record, the petitioner has submitted sufficient evidence demonstrating that the beneficiary's duties satisfy the criteria of a manager as defined in section 101(a)(44)(A) of the Act. The petitioner has resolved perceived inconsistencies, has explained its purpose and the beneficiary's role in its organizational hierarchy, has distinguished the current petition from a previously filed petition, and has provided a detailed job description for the beneficiary and his subordinates located both in the United States and in Russia.

In this matter, upon review of the totality of the record, the petitioner has established that the beneficiary will be primarily serving as a function manager for the petitioner. First, the AAO is satisfied that the beneficiary's role within the petitioning organization is that of a senior-level manager responsible for the management of an "essential function," specifically managing all the petitioner's software development and production. Within the scope of the foreign entity's business, it is clear that managing the petitioner's software development and production is an "essential" function as required by the plain meaning of the statute.

Second, the petitioner has established that the beneficiary functions at a "senior level" within the organizational hierarchy and with respect to the function managed. In performing his daily activities, the beneficiary will report to the president and will oversee managerial employees, whose subordinates perform the day-to-day tasks associated with the software development and production function. Further, it can be seen from the petitioner's multi-layered managerial structure that the beneficiary's position is senior within the petitioner's organizational management hierarchy.

Third, the petitioner has established that the beneficiary "exercises discretion" over the day-to-day operations of the function in that he controls a broad range of activities associated with the management of the petitioner's software development and production.

Finally, the petitioner has submitted sufficient evidence to establish that it maintains sufficient staff to relieve the beneficiary from performing the daily operational tasks associated with developing and producing the petitioner's software. The AAO is satisfied that the beneficiary primarily manages, rather than performs, the function.

The record establishes that the beneficiary's duties for the petitioner are managerial. The director's decision will be withdrawn as it relates to this issue.

The second issue in this matter is whether the petitioner worked in a managerial or executive capacity for the foreign entity for one year prior to entering the United States as a nonimmigrant. The petitioner has provided documentation including the beneficiary's foreign "workbook" an official document in Russia and copies of internal documents to clarify the purported difference in the beneficiary's foreign title. The "workbook" clarifies the beneficiary's foreign position and title as well as the duties associated with the position. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). Upon review of the totality of the record in this matter, the record establishes that the beneficiary's foreign position was in a 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.

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