

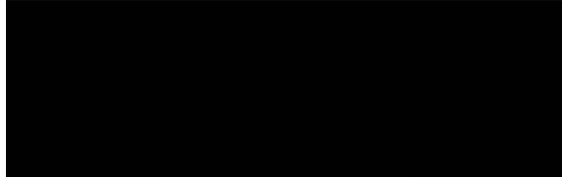
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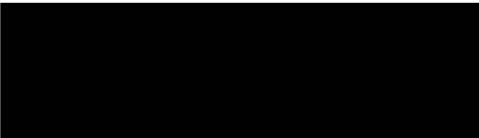
FILE: [REDACTED]
LIN 07 050 51737

OFFICE: NEBRASKA SERVICE CENTER Date: DEC 30 2008

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the appeal will be sustained.

The petitioner is a multinational corporation operating in the United States as a polymer concrete manufacturer and retailer. The petitioner seeks to employ the beneficiary as its marketing services 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. In denying the petition, the director found that the petitioner failed to establish that the beneficiary was employed by the qualifying entity abroad and that she would be employed by the U.S. petitioner in a qualifying managerial or executive capacity.

On appeal, counsel submits an appellate brief disputing the director's conclusion and underlying findings. Counsel further expanded on key aspects of the beneficiary's foreign and proposed positions, conveying a more thorough understanding of the beneficiary's managerial role in primarily overseeing rather than primarily performing the job duties associated with an essential function.

Upon review of the record, the AAO concludes that the petitioner has overcome the grounds for denial and that the director's decision should therefore be withdrawn. While the director provided a thorough and comprehensive review of the documentation submitted, the AAO disagrees with his assessment of various key facts. Namely, the AAO finds that while the beneficiary's foreign and proposed positions have involved and would involve, respectively, a limited number of direct subordinates, the record indicates the availability of other personnel to actually carry out the various duties underlying the essential function that the beneficiary managed and would manage within the given entities discussed herein.

The AAO also finds that undue emphasis was placed on the fact that the beneficiary's foreign and proposed positions are not at the highest levels with respect to the function managed. Despite the fact that the beneficiary's superiors in her respective foreign and proposed positions occupy the highest-level positions with respect to the essential function within each entity, the record nevertheless indicates that both of the beneficiary's positions are situated at a senior level with respect to the essential function managed within each organization and that each entity utilizes both in-house and contractual personnel to relieve the beneficiary from having to carry out operational tasks that are deemed non-qualifying.

In summary, the AAO finds that the information provided by the petitioner with regard to its own and the foreign entity's respective organizational hierarchies as well as the comprehensive descriptions of the beneficiary's duties within these given hierarchies are sufficient to meet the preponderance of the evidence standard. Therefore, the AAO concludes that it is more likely than not that the beneficiary was employed abroad and would be employed in the United States in a qualifying managerial capacity. *See* section 101(a)(44)(A) of the Act.

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 in the instant case has sustained that burden.

ORDER: The appeal is sustained.