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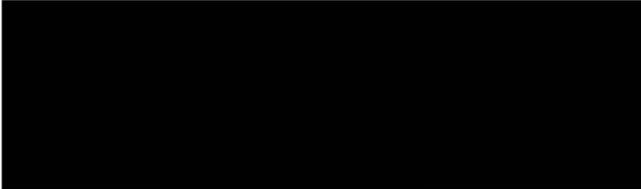
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
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OFFICE: NEBRASKA SERVICE CENTER Date: DEC 30 2008

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.


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 The decision of the director will be withdrawn and the appeal will be sustained.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 engaged in the sale and distribution of noni plant-based food products. 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 denied the petition based on the determination that that the beneficiary would not be employed in the United States in a qualifying managerial or executive capacity.

On appeal, counsel submits an appellate brief disputing the director's findings. Counsel provides additional information about the beneficiary's proposed employment, explaining in greater detail the beneficiary's role within the U.S. entity and his specific position with respect to others in the petitioner's organizational hierarchy. Upon review, the AAO concludes that the petitioner has overcome the director's findings and that the decision denying the petition must therefore be withdrawn.

While the director was correct in considering the beneficiary's subordinates as an indicator of whether eligibility has been established, this element should be reviewed in light of other relevant factors, including the beneficiary's job duties, the petitioner's overall organizational structure, and the beneficiary's position with respect to others in the organization. Proper consideration of these factors indicates that the petitioner is widely staffed with individuals who are assigned to perform many of the petitioner's daily non-qualifying tasks. While the record indicates that a portion of the beneficiary's time is allocated to tasks that may be deemed to be non-qualifying, the evidence indicates that the primary portion of the beneficiary's time would not be spent performing those tasks, but rather that the beneficiary would more likely than not spend a majority of his time performing tasks within a qualifying managerial capacity.

In summary, the information provided is sufficient to establish that the beneficiary would most likely be employed in the United States in a qualifying managerial or executive capacity and thereby meets the preponderance of the evidence standard. *See* sections 101(a)(44)(A) and (B) 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 met that burden.

ORDER: The appeal is sustained.