B-4

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

JUL 7 2004

FILE: WAC 02 245 55336 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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 a branch office of a major international airline organized in New Zealand. It provides commercial air transportation. It seeks to employ the beneficiary as its accounting 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.

The director determined that the petitioner had not established: (1) a qualifying relationship with the beneficiary's foreign employer; (2) it was doing business rather than operating as an agent or office; and, (3) 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 first issue in this proceeding is whether the petitioner has established that it is doing business rather than operating as an agent or office.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part: "*Doing business* means the 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."

The critical focus in the definition of "doing business" is not whether the petitioner is an agent or representative office, but whether the entity constitutes the "mere presence of an agent or office" without conducting any business activities. The proper focus on this issue thus, is the nature and conduct of the petitioner's business activities, if any. In the case at hand, the petitioner has presented evidence that it is involved in a high number of transactions, both in terms of volume and dollars. The petitioner has submitted sufficient evidence to establish that it facilitates the sale of passenger and cargo air transportation in the amount of $396 million annually. The petitioner has adequately established that it is engaged in facilitating the regular, systematic, and continuous provision of goods and services. The director's decision will be withdrawn as it relates to the question of whether the petitioner was doing business in a regular, systematic, and continuous manner.

The second issue in this proceeding is whether the petitioner has established a qualifying relationship with the beneficiary's foreign employer. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity. *See* section 203(b)(1)(C) of the Act.

The petitioner has submitted evidence that it is the same employer as the foreign entity in that the United States entity is a branch office of the foreign entity. The director's decision will be withdrawn as it relates to the issue of qualifying relationship.

The third issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in a managerial capacity for the United States entity. The petitioner does not request consideration of the beneficiary's position in an 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. 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.

In a July 29, 2001 letter appended to the petition, the petitioner stated that the United States accounting manager position is a managerial position. The petitioner stated that the accounting manager directs a staff of six individuals, and is responsible for "ensuring corporate accounting policies are applied, implementing and monitoring an annual expenditure budget, and establishing financial systems." The petitioner added that the accounting manager "ensures that the accounting and financial policies and practices of Air New Zealand Ltd. are utilized through out [sic] the Americas Region as Air New Zealand seeks to maintain uniformity and effective financial systems through out [sic] their global network to enable them to accurately prepare and report profit statements, balance sheets and statement of changes in working capital." The petitioner stated that the beneficiary's position impacted its total revenues of $396 million per year and total expenditures of $109 million per year. The petitioner also provided a substantive description of the beneficiary's specific duties.

The director inexplicably referenced the beneficiary's title as "senior electronics engineer." The director determined that the beneficiary's position description showed that she would be performing numerous accounting tasks involved in this area and concluded that performing the accounting tasks precluded the beneficiary from being considered an "executive." The director further determined that the beneficiary could not be considered a manager because her position was not over subordinate managers or professional employees. Finally, the director determined that the beneficiary had not shown that the beneficiary manages or directs the management of a department, subdivision, function, or component of the organization, but instead performs routine operational activities of the entity.

On appeal, counsel for the petitioner questions the director's consideration of the beneficiary's position as an executive position, noting that the petitioner requested consideration of the beneficiary's position only in a managerial capacity. Counsel also references the petitioner's detailed position descriptions for the beneficiary's subordinate employees and observes that the descriptions show that four of the six subordinate employees carry out the petitioner's accounting function. Counsel suggests that the director has ignored the record and has not considered all the evidence in the aggregate when concluding that the beneficiary is not performing primarily in a managerial capacity.

Counsel's assertions are persuasive. The petitioner has provided sufficient evidence to establish that the beneficiary manages a function within the petitioner's organization and that the nature of the function is

essential. The petitioner also has provided a comprehensive description of the beneficiary's duties and evidence that the beneficiary's subordinates carry out the tasks associated with the function. The director's decision will be withdrawn as it relates to the issue of the beneficiary's 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.