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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
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DATE: JUL 22 2011 OFFICE: NEBRASKA SERVICE CENTER

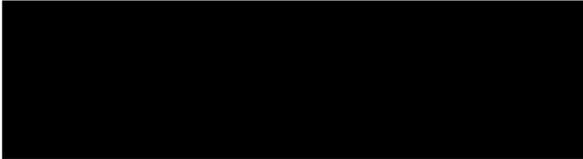


IN RE: Petitioner:
Beneficiary:



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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The director granted the petitioner's subsequent motion to reopen and affirmed the original adverse decision. 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 The decision of the director will be withdrawn and the appeal will be sustained.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 textile wholesaler. The petitioner seeks to employ the beneficiary as its general 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 a decision dated June 24, 2009, the director affirmed his original finding concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

On appeal, counsel submits an appellate brief containing a comprehensive breakdown of the beneficiary's proposed position with the U.S. entity as well as a discussion of the petitioner's employees, the educational requirements of each position considered to be the beneficiary's subordinate, and the role each employee plays in the context of the organization.

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 a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who 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 statutory definition of "managerial capacity" allows for both "personnel managers" and a "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act. If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Section 101(a)(44)(A)(iii) of the Act.

In the present matter, the director's main focus was on the beneficiary's role in the sales function. More specifically, while the director did not dispute the beneficiary's top-most placement within the petitioner's organizational hierarchy, he found that the beneficiary's role in interacting with the heads of other companies with regard to sales orders was indicative of the beneficiary performing rather than overseeing the performance of an operational function.

While the AAO does not dismiss the validity of the director's finding, it stands to reason that no beneficiary is required to allocate 100% of his time to managerial- or executive-level tasks so long as the record contains sufficient evidence to persuasively establish that the non-qualifying tasks the beneficiary would perform are only incidental to his/her proposed position.

In the present matter, the supplemental information submitted on appeal with regard to the job duties and educational requirements of the beneficiary's subordinates indicates that the beneficiary is positioned to oversee the work of a staff of professional and managerial employees. The record also shows that the petitioner had sales representatives in place at the time of filing the petition such that the beneficiary would not have to primarily carry out sales tasks. As indicated above, allocating a small portion of the beneficiary's time to non-qualifying tasks is acceptable and would not render the beneficiary ineligible for the immigrant classification sought.

In summary, after considering the additional information provided on appeal, the AAO finds that the beneficiary would more likely than not be employed in a qualifying managerial or executive capacity.

The AAO has conducted a comprehensive review of the petitioner's record and finds no other grounds for denying the instant petition.

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.