

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **AUG 20 2013** 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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. 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 The decision of the director will be withdrawn and the appeal will be sustained.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, a Washington corporation, is a subsidiary of [REDACTED] located in China. It is engaged in the import and sale of down and feather products and the export of seafood products and achieved \$2.58 million in sales in 2011. It seeks to employ the beneficiary as its President at an annual salary of \$96,000. 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, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the evidence of record is sufficient to establish that the beneficiary will be functioning in a managerial or executive position.

I. The Law

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).

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.

II. The Issue on Appeal

The sole issue to be addressed is whether the petitioner established that the beneficiary will be employed in the United States in a managerial or executive capacity.

A. Facts

The petitioner indicated on the Form I-140, Immigrant Petition for Alien Worker, that it is an import/export firm for down and feather products as well as aquatic food products with six employees and gross sales of \$2.5 million. The petitioner stated that it is an affiliate of the beneficiary's former foreign employer, [REDACTED] located in China.

The petitioner stated the beneficiary will be working as its President. In support of the initial petition, the petitioner provided a description of the position including duties with a breakdown of percentage of time spent performing duties within five areas of responsibility, which included overseeing the company's growth, directing and overseeing its overall operations, overseeing the work of the company's vice president and two divisions, directing long-term strategy and financial goals, and making major personnel decisions. The petitioner also provided several detailed examples of the beneficiary's recent managerial decisions, as well as

a flow chart illustrating how he oversees the work of subordinate staff. For each of the beneficiary's direct and indirect subordinates, the petitioner provided a detailed job description including duties and percentage of breakdown of time spent performing each duty. Among other documentation, the petitioner also provided: copies of the petitioner's IRS Form 941 Employer's Quarterly Federal Tax Returns for 2011; IRS Form 1120, U.S. Corporation Income Tax Return for 2011; an organizational chart; resumes of the beneficiary's subordinates; and evidence of the company's substantial business activities, including purchase orders, invoices, packing lists, a company brochure, and bank statements.

The director issued a request for evidence ("RFE") requesting, *inter alia*, a more detailed job description for the beneficiary; a copy of the beneficiary's work calendar; clarification regarding which employees perform the non-managerial duties of the importing/exporting business; and evidence of educational credentials for the beneficiary's subordinate employees.

In response, the petitioner submitted the requested evidence. The petitioner provided a 13-page job description for the beneficiary's position, along with the requested percentages of time spent on specific duties, and additional examples of his recent managerial decisions. The petitioner also provided the weekly job duties as requested. The petitioner explained that the import manager performs the sales, marketing research, and oversees the petitioner's relationship with U.S. clients with respect to the down and feather product import business, with assistance from the foreign entity's marketing team. The quality control inspector oversees that product of goods are performed to the client's order specifications. The petitioner explained that the goods are then imported to the end client through the client's import broker and are delivered directly to the client warehouse so that no warehouse workers are needed. The petitioner further explained that the export manager is responsible for relations with U.S. seafood suppliers and Chinese importers and wholesalers and performs the day-to-day operational tasks associated with the company's export operations.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity. The director's conclusion was based on a finding that the petitioner failed to demonstrate that the beneficiary will be primarily supervising a subordinate staff of professional, managerial or supervisory personnel who would relieve him from performing non-qualifying duties.

On appeal, counsel asserts states that the beneficiary supervises subordinate managerial personnel and that there are staff available to relieve the beneficiary of non-qualifying duties.

B. Analysis

Upon review, the petitioner's assertions are persuasive. The AAO finds sufficient evidence to establish that the beneficiary will be employed in a qualifying executive capacity.

The director's finding was based solely on a determination that the beneficiary will not be "supervising a subordinate staff of professional, managerial, or supervisory personnel who relieve the beneficiary from performing non-qualifying duties." The director provided no further discussion of the substantial evidence submitted, including the extremely detailed position descriptions provided for all employees of the petitioning company and specific examples of work performed by the beneficiary and his subordinates.

Upon review of the totality of the evidence in the record, the petitioner submitted sufficient documentary evidence to establish the beneficiary manages the petitioning organization, supervises a subordinate managerial employee, has the authority to hire and fire employees, and exercises discretion over the day-to-day operations of the petitioning organization. See sections 101(a)(44)(A) of the Act. Moreover, the record establishes that the company has sufficient staff to relieve the beneficiary from involvement in the day-to-day operations of the company, and thus corroborates the petitioner's claim that the beneficiary allocates the majority of his time to performing qualifying managerial duties that fall within the statutory definition.

Although the director appeared to base his decision partially on the size of the enterprise and the number of staff, the director did not take into consideration the reasonable needs of the enterprise. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

The petitioner is two-year old import and export company that achieved sales in excess of \$2.5 million during its first full year in operations. The petitioner has established that it hired a team of experienced full-time employees, including a vice president, to perform the day-to-day operations of the import and export departments and associated administrative functions, and the record establishes that the company is supported in part, by the staff of its Chinese parent company with respect to its import business. Although the company is still small in size at this early stage of its development, the petitioner has explained in extensive detail how its reasonable needs are met by its current staff.

While the beneficiary will be required to apply his business expertise in carrying out his job duties and perform some operational or administrative tasks, the petitioner has established by a preponderance of the evidence that the majority of the day-to-day non-managerial tasks associated with the petitioner's business functions will be performed by other employees. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As the statutory definition discusses managerial capacity in the context of "primarily," the petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties. Section 101(a)(44) of the Act. The petitioner has met that burden. Accordingly, the director's decision will be withdrawn and the petition will be approved.

III. Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained.