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



**U.S. Citizenship
and Immigration
Services**

DATE: DEC 18 2013 OFFICE: NEBRASKA SERVICE CENTER

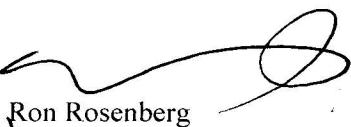
IN RE: Petitioner:
 Beneficiary:

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.


Ron Rosenberg
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 The decision of the director will be withdrawn and the appeal will be sustained.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 that seeks to employ the beneficiary in the United States as its vice president of business development. Accordingly, the petitioner endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

In a decision dated April 9, 2013, the director denied the petition after determining that the petitioner failed to establish that the beneficiary's employment abroad consisted primarily of tasks within a qualifying managerial or executive capacity. The director made this determination after issuing a request for evidence (RFE) and reviewing the response. In the denial, despite the submission a letter from the petitioner in response to the RFE, the director deemed the response to be non-compliant "regarding a statement from an authorized official of the petitioner describing the beneficiary's duties abroad."

On appeal, counsel submits a detailed appellate brief disputing the director's denial. The brief is accompanied by a thorough explanation of the beneficiary's role and job duties during his employment abroad. The supplemental document assumes the format of a chart that lists the beneficiary's general job responsibilities, the types of tasks that explain how the responsibilities were carried out, and the petitioner's role within the foreign entity's organizational hierarchy.

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 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 "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.

Additionally, the statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

II. Discussion

The petitioner is a subsidiary of [REDACTED], which in turn is part of the \$3.8 billion TVS group of companies. The petitioner and the related parent company manufacture and sell aluminum die castings for the automotive industry. The petitioner reports \$180 million in sales and 10,000 employees in the worldwide operation. The U.S. petitioner, which supports the design and development of the company's products, is staffed by ten employees.

In the denial, the director noted that the petitioner did not assign a time allocation to each of the job duties that were listed in the beneficiary's job description and thus precluded an accurate determination of the percentage of time the beneficiary spent performing qualifying tasks versus those that would be deemed as non-qualifying. Additionally, while the director determined that the petitioner failed to properly respond to a previously issued RFE, he did not specify the reasons for finding the response to be non-compliant. Despite the fact that the petitioner did not assign time allocations to the beneficiary's individual job duties, this would not be deemed as non-compliant, as the director did not instruct the petitioner to provide such time

allocations. The request was general and only instructed the petitioner to provide a statement from an authorized official of the petitioner describing the beneficiary's employment abroad.

The petitioner's failure to submit specific evidence that was never requested by the director cannot be used to discredit a petitioner's otherwise consistent claim. The petition may not be denied based on inferences or conclusions that are not supported by the record. Observations that are conclusory, speculative, equivocal, or irrelevant do not provide a sufficient basis to deny a visa petition. *Cf. Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) (in revocation proceedings).

In general, when examining the executive or managerial capacity of the beneficiary, the AAO reviews the totality of the record and does not limit its review to the beneficiary's job description. Therefore, while the director was correct in placing great emphasis on the beneficiary's job description with the foreign entity, further analysis of other elements is required.

The AAO assesses the job description in light of the foreign entity's organizational structure, the beneficiary's position therein and with respect to other employees within that entity, and the job duties performed by the beneficiary's subordinates. The petitioner provided information of this nature in its response to the RFE dated April 17, 2013. A comprehensive analysis of these factors leads the AAO to conclude that the beneficiary was more likely than not employed abroad in a qualifying managerial or executive capacity. While the record indicates that the beneficiary allocated a portion of his time to the performance of certain non-qualifying tasks, it is more likely than not that such non-qualifying tasks were only incidental to the position in question and did not occupy the primary portion of his time.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Here, the submitted evidence is relevant, probative, and credible. Upon review, the petitioner provided sufficient documentation to meet the preponderance of the evidence standard, thereby establishing that the beneficiary was more likely than not employed abroad in a primarily managerial or executive capacity.

III. Conclusion

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.