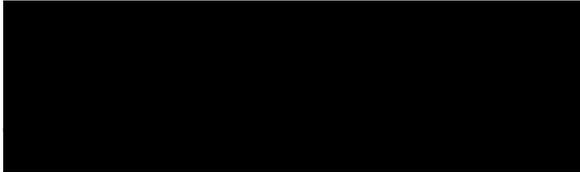




U.S. Citizenship  
and Immigration  
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By

FILE: LIN 04 093 52256 Office: NEBRASKA SERVICE CENTER Date: JUL 26 2005

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of Wisconsin. It manufactures malt beverages. It seeks to employ the beneficiary as its director of organizational development. 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 that the beneficiary had been employed with a qualifying foreign entity in one of the three years prior to entering the United States as a nonimmigrant. The director also observed that the record did not contain sufficient detail to establish that the beneficiary's position abroad and in the United States were and would be managerial or executive.

On appeal, counsel for the petitioner contends that Citizenship and Immigration Services (CIS) should approve the immigrant petition in deference to the approval of the beneficiary's L-1A intracompany transferee classification and entry into the United States in L-1 status. Counsel provides a copy of Memorandum of William R. Yates, Associate Director for Operations, USCIS, HQOPRD 72/111.3 (April 23, 2004) ("Yates Memo"), in support of her contention. Counsel asserts that the beneficiary's position as organizational manager abroad and the beneficiary's position as director of organizational development for the United States entity are managerial positions.

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).

Title 8, Code of Federal Regulations, section 204.5(j)(3) states:

- (i) Required evidence. A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:
  - (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
  - (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
  - (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
  - (D) The prospective United States employer has been doing business for at least one year.

In this matter, the petitioner indicates that the beneficiary was employed by the foreign entity from November 1998 through December 1999. An unrelated U.S. company employed the beneficiary from January 2001 to October 2002.<sup>1</sup> In the petitioner's February 2, 2004 letter appended to the petition, the petitioner indicates that the beneficiary "was employed by ██████ in October, 2002 to head ██████ Organizational Development Department." The petitioner reiterates in the same letter: "[I]n October, 2002 [the beneficiary] left America Retold (the unrelated U.S. company) to return to SAB (South African Breweries, plc). She joined ██████ a subsidiary of SAB, as the Director of Organizational Development." The petitioner does not provide the beneficiary's immigration status in its letter of support. However, Citizenship and

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<sup>1</sup> Citizenship and Immigration Services' records show that the beneficiary was employed in H-1B status for the unrelated U.S. company.

Immigration Services' (CIS) records show that the beneficiary held a H-1B classification to work for the petitioner from October 25, 2002 to October 15, 2005 (LIN 03 019 53251). CIS records show and the beneficiary's Form I-94 confirm, that the beneficiary was admitted into the United States on May 25, 2003 as an L-1 intracompany transferee.

On June 24, 2004, the director determined that the beneficiary had been employed for the foreign entity for only eight months in the three-year period before her entry into the United States as a nonimmigrant, and thus was ineligible for this visa classification.<sup>2</sup>

On appeal, counsel for the petitioner does not address this issue, instead relying on the "Yates Memo" that states: "a prior determination by an adjudicator that the alien is eligible for the particular nonimmigrant classification sought should be given deference." Counsel acknowledges that the "Yates Memo" references nonimmigrant petitions but asserts that the petitioner's immigrant petition is analogous.

Counsel's assertion in this regard is not persuasive. Counsel asserts that: "[t]he requirements for the immigrant visa under INA § 203(b)(1)(C) are substantially identical to the requirements for the nonimmigrant L-1A visa under INA § 101(a)(15)(L)" and that the U.S. Consulate in Johannesburg made a favorable decision on the same facts and parties as the facts and parties presented in the immigrant visa petition. With regard to the similarity of the eligibility criteria, the AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427.

One such significant difference for an alien seeking admission under section 101(a)(15)(L) of the Act is the continuous foreign employment requirement under section 214(c)(2)(A) of the Act which reduces the one-year period of continuous employment to a six-month period if the importing employer has filed a blanket petition and met the requirements for expedited processing of aliens covered under such petition. *See* section 214(c)(2)(A) of the Act, 8 USC 1184. There is no like reduction in the requirement for individuals seeking classification 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 referenced above, the regulations at 8 C.F.R. § 204.5(j)(3)(i)(B) require evidence that the foreign entity has employed the beneficiary for one year prior to his or her entry into the United States as a nonimmigrant.

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<sup>2</sup> The director does not note the beneficiary's H-1B classification in October 2002 and appears to rely on the petitioner's statement that the beneficiary rejoined the foreign entity (SAB) in October 2002.

Furthermore, each petition is a separate record of proceeding and receives an independent review. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Because the approved nonimmigrant petitions are not part of the current immigrant visa record of proceeding, the AAO cannot determine whether the petitioner complied with the requirements for expedited processing of aliens covered under the blanket L petition. Accordingly, the AAO does not find that the director's decision should be overturned based on the record in this matter.

Upon review of the evidence and CIS records, the beneficiary was not employed *with the foreign entity* for one continuous year within the three years preceding the beneficiary's admission to the United States as a nonimmigrant. It appears the beneficiary commenced employment with the petitioner in October 2002 in H-1B status and subsequently obtained an L-1A visa classification in May 2003. The beneficiary's employment with the petitioner in H-1B status while in the United States does not count toward the fulfillment of the requirement that the beneficiary be employed with the foreign entity for one continuous year within the three years preceding the beneficiary's admission to the United States as a nonimmigrant. In this matter the petitioner must establish that the beneficiary was employed for one continuous year with the foreign entity in one of the three years between October 1999 and October 2002, the three-year period prior to the beneficiary's entry into the United States as a nonimmigrant. *See* 8 C.F.R. § 204.5(j)(3)(i)(B). The evidence in the record reveals that the beneficiary was employed in October, November, and December 1999 for the foreign entity. The record does not provide evidence of the beneficiary's employment between January 2000 and January 2001 and shows that the beneficiary was employed with an unrelated U.S. company between January 2001 and October 2002. The record does not establish that the beneficiary was employed with the foreign entity for one continuous year within the three years preceding the beneficiary's admission to the United States as a nonimmigrant. It is for this reason that the appeal will be dismissed.

The director references deficiencies in the record regarding the beneficiary's managerial or executive position for the foreign employer and for the United States entity without providing detail of those deficiencies. Counsel for the petitioner addresses the issue of the beneficiary's managerial capacity on appeal. The AAO finds that the record contains sufficient evidence to support the petitioner's claim that the beneficiary's position as organizational manager abroad and the beneficiary's position as director of organizational development for the United States entity are managerial positions. However as determined above, the foreign employer employed the beneficiary for only three months, not the requisite one year in the three-year period preceding her entry into the United States as a nonimmigrant.

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 not been met.

ORDER: The appeal is dismissed.