



U.S. Citizenship
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Services

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FILE:



WAC 04 035 50092

Office: CALIFORNIA SERVICE CENTER

Date: NOV 10 2005

IN RE:

Petitioner:

Beneficiary:



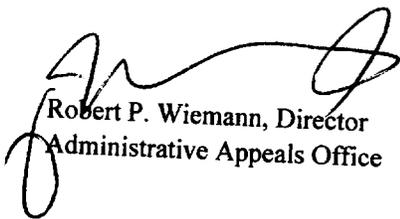
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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.


Robert P. Wiemann, Director
Administrative Appeals Office

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 publicly traded biotechnology corporation. It is engaged in research, development, and commercialization of bio-pharmaceutical products. It seeks to employ the beneficiary as its global marketing director. 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.

On July 15, 2004, the director denied the petition determining that the petitioner had not submitted sufficient evidence to establish that the beneficiary had been employed in a managerial or executive capacity for one year prior to entering the United States entity with a qualifying foreign employer. The director specifically noted that the petitioner had failed to submit brief descriptions for the beneficiary's subordinates' job duties and had failed to submit the foreign company's payroll records in response to the director's request for further evidence. The director determined that the failure to submit the requested evidence resulted in a failure to establish that the beneficiary had been employed for at least one year in a managerial or executive capacity for the foreign entity.

On the Form I-290B Notice of Appeal, filed on August 13, 2004, counsel for the petitioner indicated that a brief and/or evidence would be submitted to the AAU (Administrative Appeals Unit now designated the Administrative Office) within 30 days.¹ The statement on the appeal form reads:

On January 29, 2004 the USCIS [Citizenship and Immigration Services] requested evidence of the Beneficiary's managerial experience in the U.S. and managerial experience at the foreign employer. Petitioner submitted foreign company's organizational chart, detailed job duties for the U.S. and foreign employment, and U.S. business and organizational chart. According to USCIS in its decision to deny this petition, the petitioner did not submit sufficient evidence to establish that the beneficiary was employed for at least one year in a managerial or executive capacity with a qualifying organization. We hereby respectfully request that the decision be reconsidered and the petition be approved.

On appeal, counsel acknowledges that the beneficiary did not directly supervise professional employees when employed with the foreign entity. Counsel contends, however, that the beneficiary was responsible for directing all business affairs related to the licensing and launch of a major pharmaceutical product. Counsel claims the beneficiary's areas of responsibility included setting strategies for and providing direction, structure, and guidance to cross-functional teams of professionals responsible for successfully executing clinical trials, ensuring regulatory approval throughout the countries in the European Union, and implementing a distribution strategy designed to guarantee a successful product launch.

¹ Counsel for the petitioner timely submitted the brief and evidence but filed the brief and evidence with the California Service Center; however, the California Service Center failed to forward the brief and evidence to the AAO. Counsel should note that if a brief is not submitted at the time of filing the Form I-290B, the applicable regulations and appeal form indicate that a subsequently submitted brief or evidence should be sent directly to the AAO. See 8 C.F.R. § 103.3(a)(2)(viii)

Counsel also notes that although the petitioner did not provide job descriptions for those employees listed under the beneficiary on the organizational chart, the beneficiary spent only a small percentage of his time directly supervising the administrative coordinator and product manager. Counsel asserts that: "job information was provided for those professional employees who through the matrix organization received direction and strategy from the Beneficiary."

Defining the term managerial capacity within the context of these immigration proceedings, section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101, provides in pertinent part:

The term "managerial capacity" means an assignment within an organization in which the employee primarily -

- (i) manages . . . a . . . function . . . of the organization;
- (ii) . . . manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) . . . 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 . . . function for which the employee has authority. . . .

(Emphasis added.)

Upon review of the totality of the record, the AAO finds sufficient evidence to establish that the beneficiary managed one or more of the foreign entity's essential functions. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. However, if a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *primarily manages* the function rather than *performs* the duties related to the function.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 204.5(j)(5). Beyond the description of the job duties, the AAO will review the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. In the case of a function manager, where no subordinates are

directly supervised, these other factors may include the beneficiary's position within the organizational hierarchy, the depth of the petitioner's organizational structure, the scope of the beneficiary's authority and its impact on the petitioner's operations, the indirect supervision of employees within the scope of the function managed and value of the budgets, products, or services that the beneficiary manages.

In this matter, upon review of the totality of the record, the petitioner has established that the beneficiary was primarily serving as a function manager for the foreign entity. First, the AAO is satisfied that the beneficiary's role within the foreign organization is that of a senior-level manager responsible for the management of an "essential function," specifically managing all business affairs related to the licensing and launch of a major pharmaceutical product, including prioritization and allocation of a budget of ten to twelve million US dollars. Within the scope of the foreign entity's business, it is clear from the substantial funding of this project that managing the licensing and launch of this product was an "essential" function as required by the plain meaning of the statute. *See* section 101(a)(44)(A)(ii) of the Act.

Second, the petitioner has established that the beneficiary functions at a "senior level" within the organizational hierarchy and with respect to the function managed. *See* section 101(a)(44)(A)(iii) of the Act. In performing his daily activities, the beneficiary reported to the vice-president of marketing and sales, while working closely with other employees, a business team composed of fifteen medical and business professionals, and the European Union's Congress Department including a Congress manager and three Congress Coordinators. Further, it can be seen from the foreign entity's multi-layered managerial structure that the beneficiary's position was senior within the foreign entity's organizational management hierarchy and with respect to the licensing and launch of one of the company's specific pharmaceutical products.

Third, the petitioner established that the beneficiary "exercises discretion" over the day-to-day operations of the function in that he controls a broad range of activities associated with the management of the launch of the company's pharmaceutical product. *See* section 101(a)(44)(A)(iv) of the Act. Beyond the sales and marketing activities, the beneficiary's authority includes the allocation of a significant budget, selecting the timing and scope of clinical trials, establishing and implementing a pricing strategy, and overseeing logistics for medical conferences around the world.

Finally, the AAO is satisfied that the beneficiary primarily manages, rather than performs, the function. *See* section 101(a)(44)(A)(i) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). The petitioner has submitted sufficient evidence to establish that it maintains sufficient staff to relieve the beneficiary from performing the daily operational tasks associated with the licensing and launch of a pharmaceutical product.

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. For the foregoing reasons the decision of the director will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained.