

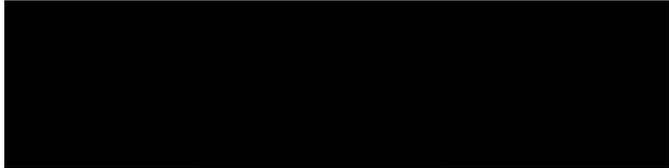
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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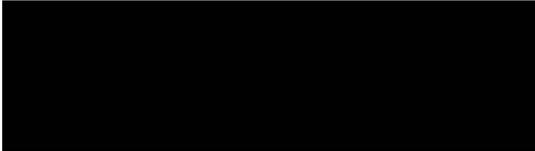
Date: **APR 24 2008**

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 preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a Texas corporation operating as a funeral and cemetery services provider. The petitioner indicates that it is the parent to its wholly owned subsidiary, [REDACTED] the beneficiary's foreign employer. It seeks to employ the beneficiary as its vice president and secretary of its board of directors. 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 based on the following grounds of ineligibility: 1) the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer; 2) the beneficiary was not employed abroad in a qualifying managerial or executive capacity; and 3) the beneficiary will not be employed in the United States in a qualifying managerial or executive capacity.

On appeal, counsel refutes the director's conclusions with additional evidence and information.

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 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 first issue in this proceeding is whether the petitioner established that it has a qualifying relationship with the beneficiary's foreign employer.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

Affiliate means:

(A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

(B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

In the request for additional evidence (RFE) dated May 26, 2005, the director instructed the petitioner to provide documentary evidence establishing its claimed parent/subsidiary relationship with [REDACTED] Limited, the beneficiary's foreign employer. The petitioner's response included a notarized affidavit from [REDACTED] the foreign entity's corporate secretary, stating that [REDACTED] is owned by four different entities all of which are owned by the petitioner, thereby resulting in the petitioner's indirect ownership of all of [REDACTED] outstanding capital stock. The petitioner also provided an excerpt from the Service Corporation International 2004 Annual Report, which breaks down [REDACTED] ownership and corroborates the statements made by Mr. [REDACTED] in his affidavit.

Nevertheless, the director denied the petition concluding that Mr. [REDACTED] affidavit couldn't be deemed documentary evidence, which is necessary to establish the petitioner's ownership of the beneficiary's foreign employer. It is noted that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, counsel reiterates the petitioner's claim and directs the AAO's attention to Exhibit 21.1, an attachment to the petitioner's Form 10-K, which was filed with the U.S. Securities and Exchange Commission. The document contains the full listing of all of the petitioner's subsidiaries, including the four companies that own [REDACTED] outstanding stock. Accordingly, the AAO concludes that the petitioner has provided sufficient documentary evidence establishing its parent/subsidiary relationship with the beneficiary's foreign employer, thereby overcoming the first of three grounds for the petition's denial.

The two remaining issues in this proceeding concern the beneficiary's employment capacity both abroad and in the United States. One issue questions whether the beneficiary was employed by [REDACTED] in a managerial or executive capacity and the other issue questions whether the beneficiary would be employed by the U.S. petitioner in a qualifying managerial or executive capacity.

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.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

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

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In his decision, the director concluded that neither the beneficiary's position abroad nor his proposed position in the United States is primarily comprised of managerial or executive duties. The director focused on a handful of duties cited in the job descriptions, which the petitioner provided in its response to the RFE. However, there is no statutory or regulatory requirement that a beneficiary's foreign and U.S. positions be entirely comprised of qualifying tasks. As such, performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties. The definitions of managerial and executive capacity merely require that the beneficiary's duties abroad and his/her proposed duties in the United States be *primarily* of a qualifying nature. *See* sections 101(a)(44)(A) and (B) of the Act. Thus, while both of the beneficiary's positions admittedly involve some nonqualifying tasks, both companies' organizational charts illustrate sufficiently complex organizational hierarchies where the beneficiary has maintained a high degree of authority and discretion with respect to the sales function while being relieved from having to primarily engage in nonqualifying tasks. Although the AAO acknowledges that the beneficiary's past and proposed positions

require a hands-on approach as far as training personnel and even creating a marketing strategy, the record does not suggest that the nonqualifying duties that are related to these responsibilities consume a majority of the beneficiary's time. Therefore, the AAO finds that the petitioner has overcome all three of the director's grounds for denial. This office sees no other grounds for denying the 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 sustained that burden.

ORDER: The appeal is sustained.