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U.S. Citizenship  
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Services

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FILE: LIN 04 007 51520 Office: NEBRASKA SERVICE CENTER Date: FEB 01 2006

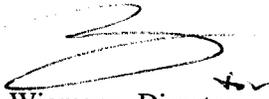
IN RE: Petitioner:  
Beneficiary:

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 matter will be remanded for further consideration.

The petitioner is a Michigan corporation that operates as a global supplier of automotive and commercial lightweight components. The petitioner seeks to employ the beneficiary as its continuous improvement/operational excellence manager. 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 was employed abroad for the requisite time period and denied the petition. Specifically, the director relied on the beneficiary's H-1B, which the beneficiary obtained during his claimed employment abroad, as prima facie evidence that the beneficiary was, in fact, employed in the United States rather than in Mexico as originally claimed. The director noted what he perceived as contradictions to the petitioner's claim, including the beneficiary's U.S. post office box, his frequent entrances to the United States without adequate evidence of his exits back to Mexico, and the beneficiary's failure to claim a foreign tax credit in his 2002 tax return.

On appeal, the petitioner provides a detailed explanation accompanied by significant supporting documentation to address each of the director's concerns. Among the documents submitted was a copy of the petitioner's Form I-129 petition for an H-1B visa in which the petitioner specifically states that the beneficiary's employment in the United States would be no more than five days per month and that 90-95% of the beneficiary's time would be spent at the facility abroad. The petitioner also submitted Form ETA 9035E, Electronic Filing of Labor Condition Application for the A-1B Nonimmigrant Visa Program, in which the petitioner states in Part B, item 4, that the beneficiary's employment in the United States would be on a part-time basis. The form was signed and dated April of 2002. The petitioner also provides a copy of the beneficiary's foreign employee identification card indicating that his employment with the foreign company commenced on May 13, 2002 as well as a number of rent receipts showing that the beneficiary maintained a foreign residence throughout the claimed period of foreign employment.

Furthermore, 8 C.F.R. § 214.2(h)(13)(v) acknowledges and makes provisions for those employees who "regularly commute to the United States to engage in part-time employment" by making such individuals exempt from the admission limitation discussed in 8 C.F.R. § 214.2(h)(13)(iii). Thus, the regulations make a clear distinction between employees who work and reside in the United States on a full-time basis, and employees, like the beneficiary, whose presence in the United States is intermittent. The evidence submitted strongly suggests that the beneficiary obtained his H-1B visa as a condition of his employment abroad and to further carry out the duties directly associated with his foreign employment.

Therefore, despite the director's thorough analysis of the record, the AAO concludes that the petitioner has submitted sufficient evidence to establish the beneficiary's residence and employment abroad for the required statutory period. However, in addition to requiring the petitioner to establish that the beneficiary was employed abroad for the requisite statutory period, 8 C.F.R. § 204.5(j)(3)(B) also instructs the petitioner to submit a statement from an authorized official establishing that the beneficiary's foreign employment was within a qualifying managerial or executive capacity. Although the director addressed the issue of the beneficiary's foreign employment, there is no indication that proper consideration was given to the beneficiary's employment capacity and his duties abroad.

Additionally, although the petitioner provided a comprehensive description of the beneficiary's responsibilities for his proposed position in the United States, additional information is required in order to affirmatively determine that the beneficiary would be employed in a qualifying capacity. 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). An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). In the instant matter, the petitioner's descriptions of the beneficiary's proposed job responsibilities indicate that the beneficiary would develop various cost-cutting programs and train employees, who may not be managerial, supervisory, or professional. Although the beneficiary may perform some nonqualifying duties and still be eligible for classification as a multinational manager or executive, the petitioner must establish that the beneficiary would *primarily* perform duties of a qualifying nature.

Accordingly, the case will be remanded so that a proper determination can be made regarding the nature of duties performed by the beneficiary during his foreign employment and the capacity of his proposed duties in the United States. The director shall issue a notice requesting any additional evidence regarding the beneficiary's specific duties and the number of hours devoted to each of the listed duties regarding the beneficiary's employment abroad and his proposed employment in the United States.

**ORDER:** The decision of the director dated November 10, 2004 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse, shall be certified to the AAO for review.