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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

LIN 07 006 51883

Office: NEBRASKA SERVICE CENTER

Date: OCT 27 2008

IN RE:

Petitioner:

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:

[REDACTED]

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, Chief
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 sustained.

The petitioner is a limited liability company organized in the State of Delaware, with its headquarters in Portland, Oregon, that engages in the manufacturing of heavy duty vehicles. The petitioner seeks to employ the beneficiary as its industrial engineering 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 (Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

On November 3, 2007, the director denied the petition determining that the petitioner failed to establish that the beneficiary was employed abroad, and will be employed in the United States, in a qualifying managerial or executive capacity.

On appeal, counsel disputes the director's conclusions and submits a brief and multiple exhibits in support of the appeal.

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).

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 a letter dated September 25, 2006 in support of the petition, the petitioner indicated that the beneficiary was employed by Freightliner Canada, Ltd., a Canadian company that is indirectly owned by the U.S. company, from September 1997 through December 2003. Specifically, the beneficiary served as the foreign entity's engineering manager from September 2002 to December 2003. The petitioner indicated that, in that role, the beneficiary headed the foreign company's process engineering and Kaizen groups and oversaw a department with 15 employees and a budget of over \$1 million. The petitioner submitted an organizational chart dated November 1,

2003 showing that the beneficiary was one of seven managers under the plant manager of the foreign entity's St. Thomas Truck Manufacturing Plant. The chart shows that as engineering manager, the beneficiary supervised fifteen engineers, engineering specialists and technicians.

In the same letter, the petitioner indicated that since December 2003, the beneficiary has been in the United States in L-1A status working for the U.S. company in the capacity of industrial engineering manager. The petitioner described the beneficiary's managerial responsibilities within the U.S. company and indicated that he supervises more than 20 industrial engineers, professionals and staff. The petitioner submitted organizational charts showing that the beneficiary is one of seven managers reporting to the director of the Corporate Manufacturing Engineering division of the U.S. company, and that as the manager of industrial engineering, the beneficiary supervises twenty employees, including six group leaders/engineers, who in turn supervise fourteen other engineers, technicians or specialists.

On July 23, 2007, the director issued a request for further evidence (RFE), noting, among other things, that the record does not adequately demonstrate that the beneficiary has been or will be primarily acting in a managerial or executive capacity. The director noted that the petitioner provided little information regarding the duties performed by the beneficiary at the foreign entity. Further, the director noted that the description of the proposed U.S. position was broad and undefined and did not adequately breakdown the actual duties the beneficiary would perform. Accordingly, the director requested a detailed and comprehensive description of the beneficiary's position abroad and proposed position in the United States, which clearly define the specific duties of each position and delineate the proportion of time devoted to such duties. The director also requested specific information regarding the job titles and duties of the beneficiary's subordinate employees.

In response, the petitioner supplemented the previous descriptions of the beneficiary's positions abroad and in the United States with further explanation of the beneficiary's managerial responsibilities in both companies, along with descriptions of the job titles and responsibilities of the beneficiary's subordinates in both companies, as requested.

On November 3, 2007, the director denied the petition, finding that the record is insufficient to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity, or that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. Specifically, the director stated that the information provided in response to the RFE still failed to clearly indicate the beneficiary's duties abroad. Further, the director noted that while the beneficiary supervises other employees, there is insufficient indication of the level of authority he had over such employees, such as whether he had the authority to hire and fire. As such, the director found, the petitioner has not demonstrated that the beneficiary's position abroad met all four prongs of the definition of "managerial capacity." With respect to the beneficiary's position in the United States, the director observed that while the petitioner provided an overview of the areas of responsibility within the beneficiary's department, the petitioner did not define or provide any additional information regarding the beneficiary's specific responsibilities in relations to these areas, such that it could be determined whether the beneficiary would be acting in a primarily executive or managerial capacity in the United States.

On appeal, counsel disputes the director's conclusions and submits a brief addressing the director's objections as well as further evidence in support of the appeal. In his brief, counsel summarized the evidence previously

submitted in support of the petition and contends that on its face, the evidence is clearly sufficient to establish that the beneficiary was employed abroad and would be employed in the United States in a managerial capacity. Counsel contends that Citizenship and Immigration Services (CIS) applied too narrow an interpretation to the job descriptions submitted, and that, read within the context of the heavy duty vehicle industry, the evidence submitted is sufficient to meet all four prongs of the definition of "managerial capacity." Counsel submits additional evidence to support these claims on appeal, including: a detailed chart demonstrating how the beneficiary's positions in the United States and abroad, as described in previous submissions, meet each of the criteria under the definition of "management capacity;" a breakdown of the percentage of time the beneficiary spent and will spend on different categories of duties in both positions; and a letter from the controller of the U.S. company verifying that, in his position in the U.S. company, the beneficiary has control over a departmental budget of approximately \$20 million.

Upon review, the AAO will withdraw the decision of the director and sustain the appeal.

Beyond the required description of the beneficiary's job duties, CIS reviews 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 this matter, the AAO finds that the petitioner has established that the beneficiary was employed by the foreign entity, and will be employed by the U.S. entity, in a primarily managerial capacity. In response to the director's denial, counsel has provided a brief and additional evidence addressing and overcoming the relevant points of contention with regard to the beneficiary's duties in the context of his role within the foreign organization as well as the U.S. entity. The AAO is satisfied that the evidence of record sufficiently demonstrates that in his position with the foreign entity, the beneficiary was responsible for managing a major component of the organization; supervised and controlled the work of a team of supervisory and/or professional employees over whom he had the authority to hire, fire or take other personnel actions; and had the authority to exercise discretion over the day-to-day operations of his department. Similarly, the petitioner has sufficiently demonstrated that in his position as the manager of the industrial engineering department of the U.S. company, encompassing all six of the company's trucking plants in the United States, Canada and Mexico, the beneficiary will be acting in a primarily managerial capacity. Based upon the sum of the documents submitted, the petitioner has established that the beneficiary was primarily employed abroad and would be primarily employed in the United States in a qualifying managerial capacity. *See* section 101(a)(44)(A) of the Act.

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.

ORDER: The appeal is sustained.