

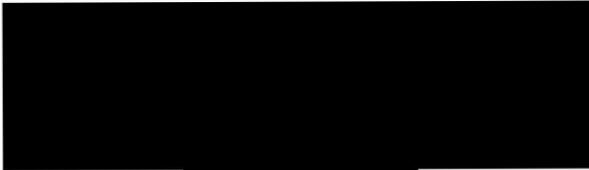
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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By

FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER Date: **JUL 28 2009**
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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:
[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.

John F. Grissom
Acting Chief 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 The decision of the director will be withdrawn and the appeal will be sustained.

The petitioner is a California corporation that seeks to employ the beneficiary as its president. 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 two independent grounds of ineligibility: 1) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity; 2) the petitioner failed to establish that it has an employer/employee relationship with the beneficiary; and 3) the beneficiary's salary is not commensurate with that of an individual to be employed in a managerial or executive capacity as president of the petitioning entity.¹

On appeal, counsel disputes the director's conclusions and submits a brief addressing each of the director's findings. After reviewing the record in its entirety, the AAO finds that there was no basis for the director's determination regarding the petitioner's employer/employee relationship with the beneficiary. Similarly, the director's implication that the beneficiary's proffered wage must somehow comport to some unspecified standard for managers and executives is erroneous. The petitioner is under no statutory or regulatory obligation to ensure that the beneficiary's proffered wage be commensurate with a given position title. Lastly, the AAO finds that the petitioner has provided adequate documentation addressing the two remaining grounds—the beneficiary's employment capacity in the United States and the petitioner doing business.

The record contains sufficient evidence of an organizational hierarchy that is capable of relieving the beneficiary from having to primarily perform non-qualifying operational tasks. The record includes several organizational charts and quarterly wage reports, all of which have been considered in light of the description of the beneficiary's job duties. A comprehensive analysis of these relevant factors strongly indicates that the U.S. entity is adequately staffed with individuals who are assigned to perform the daily non-qualifying tasks. The AAO further notes that the petitioner fully addressed the director's adverse comments regarding the beneficiary's management of non-professional subordinates by submitting evidence of each employee's educational credentials.

Despite any shortfalls in the beneficiary's job description, the information provided is sufficient to meet the preponderance of the evidence standard that the beneficiary will more likely than not be employed in the United States in a qualifying managerial or executive capacity. *See* section 101(a)(44)(A) of the Act.

¹ Although the director implied that there may be one or more grounds for denial on the basis of the petitioner's failure to establish 1) that it is doing business in the United States and 2) that the foreign entity would fill the beneficiary's position abroad in light of the beneficiary's indefinite absence, the director decided not to pursue either as a basis for denial. Additionally, regarding the latter issue, there is no statutory or regulatory requirement that the petitioner provide evidence or information establishing how the foreign entity plans to make up for the beneficiary's absence.

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 met that burden.

ORDER: The appeal is sustained.