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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**



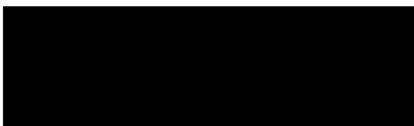
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FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER Date: DEC 09 2010

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:



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.

Thank you,

Perry Rhew  
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 The decision of the director will be withdrawn and the appeal will be sustained.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 multinational corporation operating in the United States as a seller and distributor of fiberglass. 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. In denying the petition, the director found that the petitioner failed to establish: 1) that the beneficiary was employed abroad in a qualifying managerial or executive capacity; and 2) that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

On appeal, counsel submits an appellate brief disputing the director's findings as well as additional documentation addressing the beneficiary's employment both abroad and with the U.S. entity. More in-depth information was also provided with regard to each entity's organizational structure, the beneficiary's placement and role within each organization, and the extent of the beneficiary's involvement in directing the management of each entity.

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 a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees to carry out the petitioner's daily operational tasks and the beneficiary must primarily focus on the broad goals and policies of the organization rather than on the day-to-operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also

exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

While the descriptions of the beneficiary's job duties are clearly one key element in determining whether the beneficiary has been and would be employed in a qualifying managerial or executive capacity, the job duties must be considered in addition to other relevant factors, including the overall organizational structure, which in the present matter includes employees and contractors who can carry out the requisite operational tasks, as well as the beneficiary's position with respect to others within the entity whose management he directs. A comprehensive analysis and consideration of the relevant factors strongly indicate that both the foreign and petitioning entities are adequately staffed, thus indicating that the beneficiary was relieved abroad and would be relieved in his present U.S. position from having to primarily perform the daily non-qualifying tasks. *Cf. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006)

In summary, the AAO finds that the petitioner provided sufficient documentation to meet the preponderance of the evidence standard thereby establishing that the beneficiary was more likely than not employed abroad and that he would more likely than not be employed in the United States in a primarily managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) 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. The petitioner in the instant case has met that burden.

**ORDER:** The appeal is sustained.