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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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**U.S. Citizenship
and Immigration
Services**

B4

FILE: [REDACTED] OFFICE: TEXAS SERVICE CENTER

Date: **MAR 04 2011**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas 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 The decision of the director will be withdrawn and the appeal will be sustained.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 an international airline. 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.

On June 3, 2009, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary merits classification as a multinational manager or executive with the U.S. entity because the petitioner failed to establish: 1) that it has ability to pay the beneficiary's proffered wage; and 2) that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

With regard to the issue of ability to pay, the director determined that the petitioner submitted an unaudited financial statement and showed no net assets in 2008. However, the director shows that the financial statement that was submitted in response to the request for evidence was in fact audited and included an independent auditors report. The record also shows that the beneficiary was paid the proffered wage in 2008 and that the petitioner in fact provided *prima facie* evidence to establish the petitioner's ability to pay in 2008. In analyzing a petitioner's ability to pay the proffered wage, the fundamental focus is whether the employer is making a "realistic" or credible job offer and has the financial ability to satisfy the proffered wage. *Matter of Great Wall*, 16 I&N Dec. 142, 145 (Acting Reg. Comm. 1977). Here, the AAO is satisfied that the petitioner's job offer is valid and that petitioner would more likely than not maintain its ability to pay the beneficiary's proffered wage.

With regard to the second ground for denial—that the petitioner failed to provide a description of the beneficiary's foreign employment—the AAO notes that the petitioner provided a letter dated December 18, 2008 in support of the petition and that the support letter included a valid job description, which was accompanied by an hourly breakdown and a list of job duties. Therefore, the evidence of record indicates that the director's adverse finding was erroneous and must be withdrawn. The record also includes a description of the beneficiary's proposed employment as well as the petitioner's organizational chart, which adequately illustrates the beneficiary's proposed position in the petitioning entity with respect to others. The chart displays a complex management structure with the beneficiary overseeing numerous managerial positions within a department in the petitioner's large organizational hierarchy.

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.

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.

In the present matter, the petitioner provided sufficient documentation to meet the preponderance of the evidence standard thereby establishing that the beneficiary was employed abroad and would more likely than not be employed in the United States in a primarily managerial or executive 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. The petitioner in the instant case has sustained that burden.

ORDER: The appeal is sustained.