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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



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

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[REDACTED]

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DATE: **MAY 26 2011**

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]
[REDACTED]

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.

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 The decision of the director will be withdrawn and the appeal will be sustained.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 Texas corporation operating in the United States as a provider of leasing services dealing with concrete pumps. 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; 2) that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity; and 3) that the petitioner operates as a multinational entity.

On appeal, counsel disputes the denial and addresses the director's adverse findings.

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 "managerial capacity" allows for both "personnel managers" and a "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 204.5(j)(4). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 204.5(j)(2).

In the denial, the director made several findings that focused on minor details that have little bearing on the petitioner's eligibility. First, the director questioned the credibility of the various support letters based on the fact that the same individual signed a letter regarding both the U.S. and the foreign entities. The director also

questioned the foreign entity's use of the present tense in describing the beneficiary's foreign employment. The AAO finds that the director's focus was misplaced and should not adversely affect a determination of the petitioner's overall eligibility given the credible evidence that has been submitted in support of the petitioner's claim.

The AAO also finds that the director's determination with regard to the petitioner's status as a multinational entity was not warranted when reviewing the totality of the evidence on record.

In light of the above, the AAO notes that, while the beneficiary's job description is often the first element to be reviewed when determining the managerial or executive nature of the beneficiary's proposed and/or foreign employment, other factors must also be considered. The AAO also gives considerable weight to an entity's organizational hierarchy, the beneficiary's position therein, and evidence of a company's overall ability to relieve the beneficiary from having to primarily perform the daily operational tasks.

Therefore, while the director was correct in placing great emphasis on the descriptions of the beneficiary's duties with the U.S. and foreign entities, this element must be assessed in light of a comprehensive analysis of the other relevant factors. In the present matter, the record indicates that both the U.S. and foreign entities are equipped with sufficiently complex organizational structures with managerial tiers and lower level employees. The record also shows that the beneficiary's positions with respect to others within both entities were indicative of someone operating at a high management level. Consideration of the entire record strongly indicates that both entities are adequately staffed such as to relieve the beneficiary from having to primarily perform non-qualifying operational tasks.

In the present matter, the AAO finds that the preponderance of the evidence standard has been met thereby establishing that the beneficiary would more likely than not be employed in the United States in a primarily 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. The petitioner in the instant case has sustained that burden.

ORDER: The appeal is sustained.