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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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DATE: OCT 31 2011

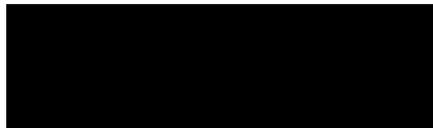
OFFICE: TEXAS SERVICE CENTER

FILE:

IN RE: Petitioner:
 Beneficiary:

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, 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 The decision of the director will be withdrawn and the appeal will be sustained.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 a provider of industrial specialty services. It seeks to employ the beneficiary as its inventory control 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 (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

In a decision dated October 30, 2009, the director denied the petition based on the conclusion that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. The director determined that the petitioner failed to provide (1) a detailed explanation of the beneficiary's job duties with the foreign entity; (2) a clear and legible organizational chart establishing where within the hierarchy the beneficiary's position falls in relation to other employees; and (3) job descriptions for the beneficiary's subordinates to establish who, if not the beneficiary, primarily performed the daily operational tasks within the beneficiary's department.

On appeal, the petitioner, through counsel, supplements the record with a more detailed description of the job duties performed by the petitioner during his employment abroad, job descriptions of the beneficiary's subordinates as well as other employees within the department that was managed by the beneficiary, and a detailed organizational chart clearly depicting the beneficiary's position in relation to all the employees within his department as well as the upper management tier to whom the beneficiary was subordinate.

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 "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. *See* section 101(a)(44)(A)(ii) of the Act. 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. 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. Section 101(a)(44)(A)(iii) of the Act.

Although the job description submitted by the petitioner on appeal indicates that there were certain non-qualifying aspects to the beneficiary's position with the foreign entity, the Act does not require the petitioner to establish that the beneficiary allocated 100% of his time to managerial- or executive-level tasks so long as the petitioner establishes that the beneficiary's non-qualifying tasks were only incidental to his position. Only an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The AAO notes that when examining the executive or managerial capacity of the beneficiary, the AAO will examine the description of the employment, the relevant entity's organizational hierarchy, the beneficiary's position therein, and the entity's overall ability to relieve the beneficiary from having to primarily perform the daily operational tasks. In the present matter, the petitioner has supplemented the record with a sufficiently detailed description of the beneficiary's employment with the foreign entity. That information is supported by a detailed organizational chart that sufficiently illustrates the beneficiary's placement within the foreign entity's organization and by job descriptions pertaining to the employees, both supervisory and non-supervisory, who primarily carried out the non-qualifying tasks within the beneficiary's department.

After reviewing the supplemental documents described above, 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 by the foreign entity 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.