

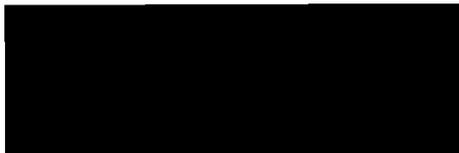
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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DATE: SEP 09 2011

OFFICE: NEBRASKA SERVICE CENTER

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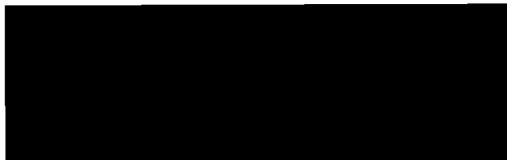
Petitioner:

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, 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 The decision of the director will be withdrawn and the appeal will be sustained.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 that seeks to employ the beneficiary as its executive manager of sales and marketing. 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 addressing the director's concerns. Counsel also provided more in-depth information 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 the management of an essential function within 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 "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 while the term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an essential, or key, function within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii).

In the denial, the director found that the petitioner failed to establish that the beneficiary's subordinates in the United States are professional employees. However, the record indicates that the beneficiary's primary responsibility is the management of a function rather than personnel. This point, along with other relevant factors, is adequately addressed in counsel's appellate brief.

Therefore, while the director was correct in placing great emphasis on the descriptions of the beneficiary's duties with the U.S. entity, this element must be assessed in light of a comprehensive analysis of other relevant factors, including 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. Proper consideration of these factors strongly indicates that both the foreign and the petitioning entities are adequately staffed with individuals who are assigned to perform the daily non-qualifying tasks, thus relieving the beneficiary from having to allocate her time primarily to the performance of non-qualifying tasks. *Cf. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006).

In the present matter, the petitioner provided sufficient documentation to meet the preponderance of the evidence standard 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 met that burden.

ORDER: The appeal is sustained.