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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



B4

DATE: APR 24 2012

OFFICE: NEBRASKA SERVICE CENTER

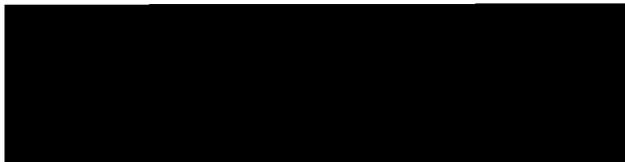


IN RE:           Petitioner:  
                  Beneficiary:



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, 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 The decision of the director will be withdrawn and the appeal will be sustained.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 software solutions firm. 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 for the statutorily required time period; 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 effectively challenging the director's findings and pointing to newly submitted supporting documents, which address and overcome the grounds for denial.

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.

As a preliminary matter, the AAO finds that counsel properly articulated a deficiency in the director's request for evidence, where the director merely instructed the petitioner to provide evidence of the beneficiary's initial U.S. entry, thereby overlooking the possibility that the beneficiary may have subsequent U.S. entries in addition to the first one. Counsel points to supporting documents that effectively establish that, in fact, the beneficiary did have multiple U.S. entries and that prior to his latest entry, the beneficiary had a prolonged period of foreign employment with the petitioner's foreign affiliate. Supporting evidence has been reviewed and the AAO finds that the job description provided with regard to the beneficiary's employment with the qualifying foreign entity indicates that his position was within a qualifying managerial or executive capacity.

Next, with regard to the beneficiary's proposed employment with the U.S. entity, the AAO finds that the petitioner has provided sufficient evidence to overcome the adverse finding. While the director was correct in emphasizing the descriptions of the beneficiary's duties with the foreign and U.S. entities, this element must

be reviewed as part of a comprehensive analysis including relevant factors, such as the overall organizational structure, the beneficiary's placement therein, and the beneficiary's supervision of managerial, supervisory, and/or professional staff. In the present matter, the record is persuasive in showing that the petitioner is sufficiently complex in its hierarchical composition and is staffed with skilled professionals whom the beneficiary has and would continue to manage as they carry out the operational tasks associated with software engineering.

Lastly, the AAO finds that the petitioner has adequately established that, while the petitioner has been acquired by another corporation pursuant to a merger agreement, the acquisition has had no adverse effects on the petitioner's eligibility for the immigration benefit sought herein. Other than a change in the petitioner's ownership, the petitioner has experienced no change in its previously established qualifying relationship with the beneficiary's foreign employer and the beneficiary's duties, as determined above, still fit the statutory definition of managerial or executive capacity.

Accordingly, the AAO concludes that the petitioner has overcome the director's adverse findings and the denial must therefore be withdrawn.

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.