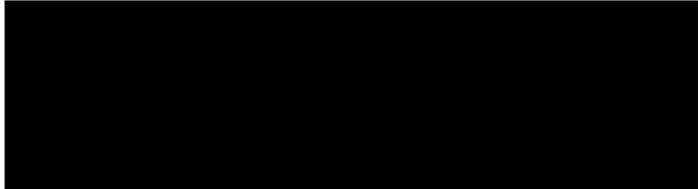


U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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OFFICE: NEBRASKA SERVICE CENTER

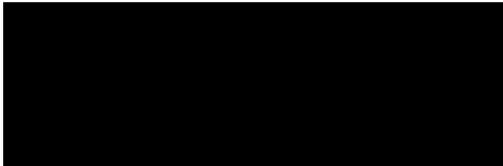


IN RE:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting 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 The decision of the director will be withdrawn and the appeal will be sustained.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 Delaware corporation operating in the United States as a mergers and acquisitions consulting 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 that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

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 "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 determined that the beneficiary's subordinates are not managerial, professional, or supervisory employees and found that the petitioner failed to establish a need for the beneficiary's two subordinates. The director also restated the job description provided by the petitioner in response to the RFE and concluded that the job description was inadequate. In light of these findings, the director determined that

the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity.

Contrary to the director's determination, the AAO finds that the record of proceeding contains sufficient evidence to establish that the beneficiary's subordinates are professional employees. The record also adequately demonstrates the petitioner's need to employ both individuals in carrying out the underlying tasks of the department the beneficiary oversees within the petitioning organization.

Furthermore, 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 employment, other factors must also be considered. As such, the AAO finds it necessary to give considerable weight to the nature of the business where the beneficiary would be employed, that entity's organizational hierarchy, the beneficiary's position therein, and evidence of the company's overall ability to relieve the beneficiary from having to primarily perform the daily operational tasks of the business.

While the director was correct in placing great emphasis on the description of the beneficiary's duties with the U.S. entity, this element is but one part of what should be a comprehensive analysis where all relevant factors are considered together to determine eligibility. Consideration of the entire record indicates that the petitioning entity is adequately staffed to relieve the beneficiary from having to primarily perform non-qualifying operational tasks.

The AAO finds 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 has met that burden.

ORDER: The appeal is sustained.