

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



84

DATE: DEC 20 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The matter later came before the Administrative Appeals Office (AAO) on appeal, which was summarily dismissed. The petitioner subsequently filed a motion to reopen and reconsider, which caused the AAO to withdraw its prior decision and issue a new decision affirming the director's original denial. The matter is now before the AAO on a second motion to reconsider. The AAO will grant the motion, withdraw its prior decision, and sustain the petitioner's appeal.

The petitioner is a California corporation that seeks to employ the beneficiary as its chief executive officer. 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.

The director denied the petition based on two grounds: 1) the petitioner failed to provide sufficient evidence to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity; and 2) the petitioner failed to establish that the beneficiary would be employed in the United States in a managerial or executive capacity. On appeal, counsel disputed the director's decision.

The record at the time of the appeal indicated that a supporting appellate brief was not submitted and that a summary dismissal was warranted based on the determination that the petitioner failed to point to an error in the application of law or a statement of fact.

On motion, the petitioner's prior counsel submitted evidence to establish that an appellate brief had been submitted by prior counsel and that a full decision was warranted.

After reviewing the decision, the AAO determined that prior counsel failed to adequately address the grounds for denial, thus leading to the determination that eligibility had not been established.

The petitioner's current counsel has since submitted a new brief in which he properly addresses the prior adverse findings and the documents upon which the director, and subsequently the AAO, relied in making those findings. Despite the ineffective arguments of the petitioner's prior counsel, the petitioner's counsel successfully sheds light on previously submitted evidence that had been misinterpreted thus leading to the unfavorable decisions of the director and the AAO.

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.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Counsel in the present matter has thoroughly addressed the AAO's adverse findings and has provided sufficient cause showing that such findings should be withdrawn. The AAO finds that the petitioner has met its burden of proof, establishing that it is more likely than not that the beneficiary was employed abroad and that he would be employed in the United States in a qualifying managerial or executive capacity.

The AAO has conducted a comprehensive review of the petitioner's record and finds no other grounds for denying the instant petition.

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 motion is granted, the previous appeal is sustained, and the petition is approved.