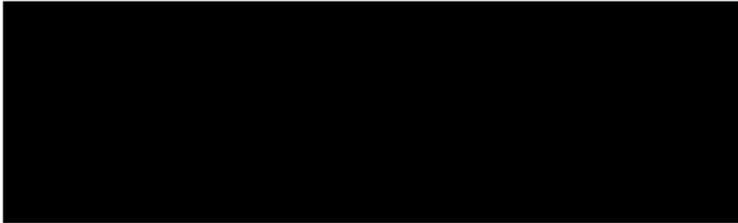


U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



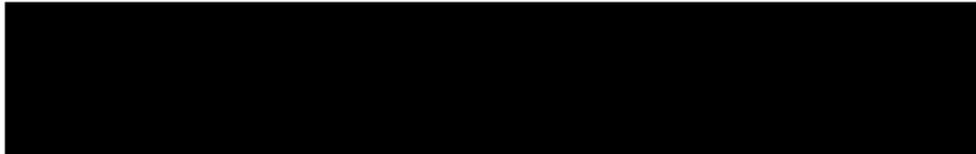
B4

DATE: DEC 27 2012

OFFICE: NEBRASKA SERVICE CENTER

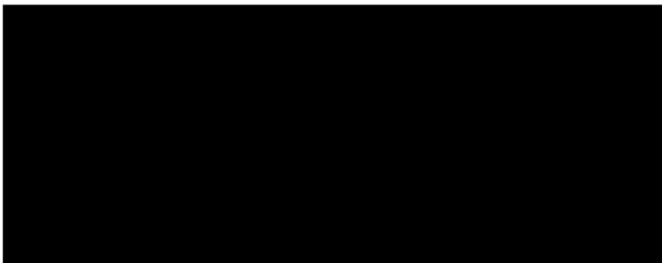
FILE: [REDACTED]

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 The decision of the director will be withdrawn and the appeal will be sustained.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 an Oregon corporation engaged in the production and sale of a computer geared to optimize maximum efficiency of car engines. The petitioner seeks to employ the beneficiary as its general manager charged with directing the operation of the petitioning entity by overseeing product development, company finances, personnel, and sales of the company's product.

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 determined that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. The denied the petition in a decision dated September 8, 2011.

On appeal, counsel disputes the denial and addresses the director's adverse findings. Counsel also offers additional supporting evidence further establishing the beneficiary's job responsibilities and his role within the petitioner's organizational hierarchy.

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. 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).

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.*

In the denial, the director focused on the beneficiary's job description, concluding that the petitioner provided vague information that precluded an affirmative finding that the beneficiary would primarily perform job duties of a qualifying nature. After conducting its own independent review of the record, the AAO has reached a different conclusion.

While the AAO agrees that the beneficiary's job description plays a major role in helping to determine the managerial or executive capacity of a given position, there are other relevant factors that must also be considered. The AAO finds it necessary to consider the nature of the business where the beneficiary would be employed, the entity's organizational hierarchy, the beneficiary's position therein, and the company's ability to relieve the beneficiary from having to primarily perform the daily operational tasks of the business.

While the director was correct in focusing on the descriptions 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 strongly 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 preponderance of the evidence standard has been met, 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 has met that burden.

ORDER: The appeal is sustained.