

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



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DATE: DEC 28 2012

OFFICE: NEBRASKA SERVICE CENTER

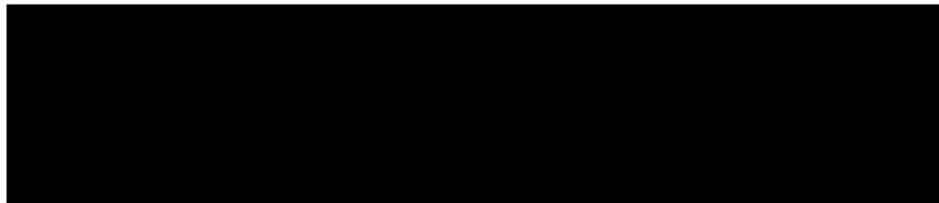


IN RE: Petitioner:  
Beneficiary:



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,

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 The decision of the director will be withdrawn and the appeal will be sustained.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 limited liability corporation operating in the United States as a luxury hotel establishment. 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 the conclusion that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. Although the director noted that the petitioner failed to submit a copy of the foreign entity's organizational chart, the director did not affirmatively issue an adverse finding pertaining to the beneficiary's former employment with the foreign entity. Moreover, the AAO has conducted a thorough review of the record and concludes that an adverse finding would not have been warranted with regard to the beneficiary's employment abroad. Therefore, the only one adverse conclusion to be addressed in this matter is the issue of the beneficiary's proposed employment with the U.S. petitioner.

On appeal, counsel disputes the denial and addresses the director's adverse findings, providing a detailed discussion of the petitioner's vast organizational hierarchy and the beneficiary's position within that hierarchy and with respect to his subordinates.

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).

In the denial, the director based his conclusion on several observations. First, the director found that the petitioner failed to establish that the beneficiary would oversee the work of professional, managerial, or supervisory personnel. Second, the director found that the petitioner has not reached a level of organizational complexity that could sustain the beneficiary in a position where the primary portion of his time would be allocated to tasks within a qualifying managerial or executive capacity.

After reviewing the record in its entirety, the AAO finds that the director's observations were incorrect. Contrary to the director's findings, the record adequately demonstrates a complex organizational hierarchy where the beneficiary occupies one of several management tiers. Both the record and counsel's description of the petitioning organization indicate that beneath the beneficiary's managerial tier, there are several layers of personnel and the layer that is directly subordinate to the beneficiary is comprised of supervisory personnel who have subordinates of their own. Thus, while it is not clear whether the beneficiary's direct subordinates are professional employees, section 101(a)(44)(A)(ii) of the Act clearly states that the beneficiary may oversee the work of other managerial or supervisory employees (regardless of whether they are also deemed professional) and still be deemed as being employed within a qualifying managerial capacity.

Furthermore, in reviewing the description of the beneficiary's proposed employment, the AAO finds that the record contains sufficient information to demonstrate that the primary portion of the beneficiary's time would be allocated to the supervision of a managerial and/or supervisory staff, thus indicating that the beneficiary would primarily perform tasks within a qualifying managerial capacity.

Accordingly, the AAO finds that sufficient evidence has been submitted to show that the beneficiary would more likely than not be employed in the United States in a primarily managerial capacity, thereby allowing the petitioner to meet the preponderance of the evidence standard. *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.