

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

**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: JUL 25 2012

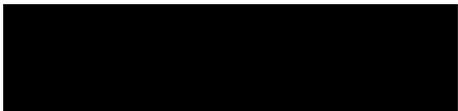
OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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 "Perry Rhew".

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 The decision of the director will be withdrawn and the appeal will be sustained.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 retailer of doors and moldings. 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 submits an appellate brief disputing the director's findings and providing additional, more detailed information about the beneficiary's proposed employment with the U.S. entity.

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.

While the director was correct to consider the petitioner's organizational hierarchy in assessing the beneficiary's eligibility for the immigrant classification sought herein, staffing should be considered in light of the beneficiary's job duties and the petitioner's own organizational needs based on the type of business it operates.

After reviewing the relevant evidence and information and considering the additional details that have been provided in support of the appeal, the AAO finds that the petitioning entity is adequately staffed and sufficiently complex in its staffing composition to relieve the beneficiary from having to allocate his time primarily to the performance of non-qualifying tasks. Although the AAO acknowledges that the beneficiary would allocate some of his time to the performance of certain non-qualifying tasks, there is no statute or regulation that requires the beneficiary to allocate 100% of his time exclusively to job duties that are within a managerial or executive capacity. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive

capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). The AAO finds that proper consideration of the beneficiary's job duties within the context of an adequately staffed organization indicates that the beneficiary would be relieved from having to allocate the primary portion of his time to those daily operational tasks that fall outside the definition of managerial or executive capacity.

Accordingly, the AAO concludes that the petitioner has overcome the director's adverse findings. As the record does not show any other grounds for finding the petitioner ineligible, the AAO finds that approval of the petition is warranted.

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.