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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



DATE: OFFICE: TEXAS SERVICE CENTER

FILE: 

AUG 29 2013

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The petitioner subsequently filed a motion to reopen and reconsider. The director dismissed the motion and 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 The decision of the director will be withdrawn and the appeal will be sustained.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 personnel recruitment agency. It seeks to employ the beneficiary as its Operations Director. 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 dismissing the petitioner's motion, the director determined that the petitioner failed to establish that: 1) the beneficiary was employed abroad in a qualifying managerial or executive capacity; 2) the beneficiary would be employed in the United States in a qualifying managerial or executive capacity; and 3) the petitioner had been doing business for one year prior to filing the instant petition. Although the director's original decision included two additional grounds for denial - the petitioner's failure to establish that it had the ability to pay the beneficiary's proffered wage and failure to establish that its foreign affiliate continued to do business - the director determined that the petitioner overcame these grounds and limited the dismissal of the motion to the three grounds enumerated above.

On appeal, counsel submits an appellate brief disputing each of the grounds that served as an alternate basis for denial.

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 AAO will first address the director's adverse finding with regard to the beneficiary's proposed employment with the U.S. entity and his prior employment abroad with the petitioner's foreign affiliate.

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. 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. Section 101(a)(44)(A)(iii) of the Act.

Additionally, 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 general, when examining the executive or managerial capacity of the beneficiary, the AAO reviews the totality of the record and does not limit its review to the descriptions of the beneficiary's respective positions. Therefore, while the director was correct in placing significant emphasis on the description of the beneficiary's employment with the U.S. and foreign entities, further analysis of other elements is required. Specifically, the job descriptions should be assessed in light of the respective entities' organizational structures, the beneficiary's positions within each entity and with respect to other employees in the respective hierarchies, and the job duties performed by each entity's staff members to determine whether the beneficiary would be relieved from performing primarily non-qualifying tasks.

After reviewing all of these factors, the AAO finds that the petitioner has established that the beneficiary was employed abroad in a qualifying managerial or executive capacity and that he would be employed in the United States in a qualifying managerial or executive capacity.

Contrary to the director's finding, the petitioner's submission of evidence showing an expansion of its staff is not an indication that the petitioner intends to alter the facts upon which its original I-140 filing was based. As indicated by counsel in his brief, the new evidence, while not relevant to the issue of whether the petitioner was eligible at the time of filing, was merely submitted to show growth and development of the petitioner's organizational hierarchy, which is relevant for the purpose of showing the petitioner's ability to maintain its eligibility going beyond the date the petition was filed.

As the statutory definition discusses managerial and executive capacity in the context of "primarily," the petitioner need only establish that the beneficiary devoted and will devote more than half of his time to qualifying duties. See sections 101(a)(44)(A) and (B) of the Act. The petitioner has met that burden. Accordingly, the petitioner has established by a preponderance of the evidence that the beneficiary has been employed abroad and would be employed in the United States in a qualifying managerial or executive capacity. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The remaining issue is whether the petitioner established that it had been doing business for at least one year at the time the petition was filed on December 19, 2011. While the director properly noted that the petitioner did not provide invoices to account for each and every month of the 12-month period in question, the AAO finds that based on the totality of the evidence, the petitioner has met its burden of proof. Notably, the petitioner reported over \$161,000 in gross sales in 2010 and \$365,000 in sales in 2011, figures which, when considered with the submitted invoices and contracts, support a finding that the petitioner had been doing business throughout the preceding year.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained.