



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 20 2013 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)

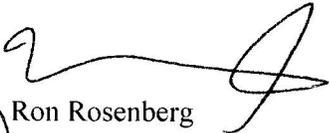
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a Delaware corporation that seeks to employ the beneficiary as its president. The petitioner's parent company, [REDACTED] in South Korea, with over one million users in South Korea, Japan, and China. As the U.S. subsidiary, the petitioner operates an online computer game service that is optimized for domestic broadband users. 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 support of the Form I-140 the petitioner submitted a statement dated June 8, 2010, which contained relevant information pertaining to the petitioner's eligibility, including an overview of the petitioner's business, the business of its foreign parent entity, and descriptions of the beneficiary's foreign and proposed employment. The petitioner also provided supporting evidence in the form of financial and corporate documents pertaining to both entities.

The director reviewed the petitioner's submissions and determined that the petition did not warrant approval. The director therefore issued a request for additional evidence (RFE) dated July 12, 2010 informing the petitioner of various evidentiary deficiencies. Among the deficiencies that the director addressed was the lack of sufficient evidence showing that the beneficiary was employed abroad in a qualifying managerial or executive capacity. Although the director acknowledged the petitioner's earlier submission of the beneficiary's job description pertaining to the foreign employment, he requested that the petitioner provide a more detailed description listing the beneficiary's specific job duties and the percentage of time the beneficiary allocated to each task. The director also instructed the petitioner to provide the foreign entity's organizational chart depicting the beneficiary, his subordinates, and superiors and these employees' detailed job descriptions

The petitioner provided a response statement dated August 12, 2010 which included a list of the beneficiary's job responsibilities and their respective percentage breakdowns. The petitioner also listed the beneficiary's four subordinates and each individual's key job responsibility. Although the petitioner provided the foreign entity's organizational chart in which the beneficiary's subordinates were depicted, the petitioner did not disclose these employees' job titles.

After reviewing the record, the director concluded that the petitioner established that the beneficiary would be employed in an executive capacity in the United States but failed to demonstrate that the beneficiary was employed abroad in a qualifying managerial or executive capacity. The director found that the job description pertaining to the beneficiary's foreign employment was overly vague and appeared to encompass a wide variety of job duties, which may have included the design and development of online computer games. The director determined that the information provided did not establish that the beneficiary allocated his time primarily to the performance of tasks within a qualifying managerial or executive capacity and therefore issued a decision dated November 2, 2010 denying the petition.

On appeal, counsel disputes the director's conclusion and resubmits the previously submitted documentation, including the beneficiary's foreign job description and the foreign entity's organizational chart.

Upon review, the AAO finds that the submissions on appeal are not persuasive and fail to overcome the director's denial. The discussion below will provide an analysis of the relevant documentation and will explain the underlying reasoning for the AAO's decision.

I. The Law

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.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (i) manages the organization, or a department, subdivision, function, or component of the organization;

- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. 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)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

II. Discussion

The primary issue to be addressed in this proceeding is the beneficiary's employment capacity in his position with the foreign entity. Specifically, the AAO will examine the record to determine whether the petitioner submitted sufficient evidence to establish that the beneficiary was employed abroad by the foreign parent entity in a qualifying managerial or executive capacity.

In examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The AAO also finds that it is appropriate and often necessary to consider other relevant factors, such as an employer's organizational chart, which shows the entity's organizational complexity and the beneficiary's placement in relation to other employees within the staffing hierarchy.

In the present matter, the director properly determined that the initial information provided with regard to the beneficiary's employment abroad was overly vague and failed to disclose the specific tasks the beneficiary performed on a daily basis. The director also noted that the beneficiary's resume indicated that he took an active role in producing the company's product or services.

On appeal, the petitioner submits additional evidence, including a letter from the Vice President of the corporation attesting to the beneficiary's overseas job duties and an organizational chart.

While the AAO takes note of the relatively vague description of the beneficiary's key responsibilities, the AAO observes that the petitioner consistently and persuasively established that the beneficiary managed a department, subdivision, function, or component of the overseas organization. Within the organizational hierarchy, the beneficiary reported directly to the Vice President of the overseas company and was one of four departmental managers within the [REDACTED] division who oversaw a workforce of 700 employees. While the petitioner could have described the organization with more detail, the general information in the record is consistent and supported by relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

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.

The term "function manager," however, applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 204.5(j)(5).

In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. 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. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

In this matter, although the petitioner described the beneficiary as allotting 30 percent of his time to supervisory duties, the petitioner provided evidence that the beneficiary managed an essential function of the overseas company. On appeal, the Vice President provides a detailed job description, clarifying that the beneficiary's "responsibilities were to direct and manage the strategy and content portfolio of the service website, personalized service section of [REDACTED], and the community service and stereophonic service of [REDACTED]. Through the description of the beneficiary's department, including the descriptions of the subordinate employees, the record adequately describes the beneficiary as the lead employee who was accountable for managing an essential or critical function within the organization.

In the present matter, the AAO finds that the petitioner has provided sufficient evidence to establish that it is more likely than not that the beneficiary was employed abroad in a qualifying managerial capacity. *See Matter of Chawathe*, 25 I&N Dec. at 376. Although the AAO duly notes the director's observations that the beneficiary's duties may have included the design and development of online computer games, this factor is not inconsistent with the petitioner's otherwise credible claims and supporting documentation.

III. Conclusion

The AAO finds that the petitioner has submitted sufficient evidence to overcome the sole basis for denial and that there are no other grounds for denying the petition. The decision of the director will be withdrawn. 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.