



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

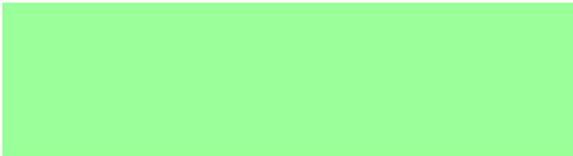
DATE: **MAR 04 2013** OFFICE: NEBRASKA SERVICE CENTER

FILE: 

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.

  
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 The decision of the director will be withdrawn and the appeal will be sustained.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 Illinois corporation operating in the United States as a software development company. It seeks to employ the beneficiary in the position of team leader and solution manager. 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 determined that the petitioner failed to establish that the beneficiary was employed abroad and that he would be employed in the United States in a qualifying managerial or executive capacity.

On appeal, counsel submits an appellate brief addressing the two grounds that served as alternate bases for denial. Counsel fully expounds on the beneficiary's employment with the U.S. and foreign entities providing a more comprehensive review of the nature of the foreign and proposed positions.

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.

As stated above, the director's primary focus in denying the petition was on the nature of the beneficiary's foreign and proposed employment.

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.

When 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 will then consider this information in light of the petitioner's organizational hierarchy, the beneficiary's position therein, and the petitioner's overall ability to relieve the beneficiary from having to primarily perform the daily operational tasks.

Upon review, the petitioner has established by a preponderance of the evidence that the beneficiary is eligible for the requested visa classification. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

While the director was correct in placing great emphasis on the description of the beneficiary employment with the foreign and U.S. entities, the petitioner has submitted sufficient evidence of each entity's organizational structure and the beneficiary's position with respect to others within the department he managed abroad and would manage in the United States. The evidence indicates that the beneficiary was and would be positioned to oversee the work of a professional staff. The AAO finds that sufficient evidence has been provided to establish that both entities are adequately staffed with individuals who are able to perform the daily operational tasks of developing software such that the beneficiary would be relieved from having to do so. *Cf. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006)

Accordingly, the AAO finds that the petitioner provided sufficient documentation to establish by a preponderance of the evidence that the beneficiary has been and will be employed 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 in the instant case has sustained that burden.

**ORDER:** The appeal is sustained.