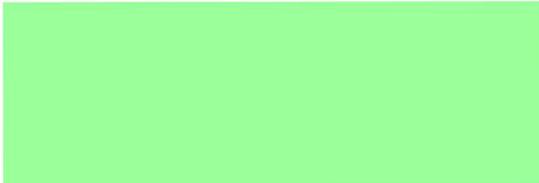


(b)(6)

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



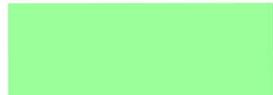
U.S. Citizenship
and Immigration
Services



DATE: **MAY 03 2013**

OFFICE: TEXAS SERVICE CENTER

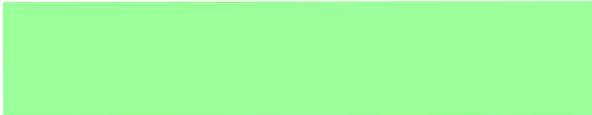
FILE:



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All documents 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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas 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 The decision of the director will be withdrawn and the appeal will be sustained.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 Texas corporation operating in the United States as an advertising agency. 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 concluded that the petitioner failed to establish that the beneficiary was employed abroad and would be employed in the United States in a qualifying managerial or executive capacity.

On appeal, counsel disputes the denial and submits an appellate brief to address the director's adverse findings.

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 determined that the beneficiary's personal involvement in the direction of advertising campaigns, including serving as the point of contact for company clients, indicated that the beneficiary performed and would continue to perform certain operational tasks, which he found to be outside the realm of a qualifying managerial or executive capacity. The director also found that the petitioner provided deficient job descriptions that failed to establish that the beneficiary's employment abroad and her proposed employment in the United States consisted and would consist primarily of qualifying tasks.

After reviewing the record in its entirety, the AAO has reached a different conclusion. While the director was correct in considering the descriptions of the beneficiary's employment with the foreign and U.S. entities, the AAO finds that further analysis of other elements is also required. Namely, the job description should be assessed in light of each entity's organizational structure or the organizational structure of the department the beneficiary managed and would manage. In the present matter, the organizational charts depicting the foreign and U.S. entities show that the advertising account management teams of both entities consisted of professional employees whose work the beneficiary was and would be charged with overseeing and who were and would be available to relieve the beneficiary from having to allocate the primary portion of her time to the performance of non-qualifying operational tasks.

Counsel's statements in the appellate brief further clarified the beneficiary's employment as one of head of a major department within an organization of substantial complexity. While it does appear that some portion of the beneficiary's time would be allocated to non-qualifying operational tasks, the AAO acknowledges that no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks, so long as the non-qualifying tasks the beneficiary would perform are only incidental to the position(s) in question.

In the present matter, while the director was correct in placing great emphasis on the descriptions of the beneficiary's job duties with the U.S. and foreign entities, the AAO has considered this element in greater depth in light of other highly relevant factors. The record shows that each entity's advertising department where the beneficiary's employment has and would take place is adequately staffed with advertising professionals. The record further shows that the beneficiary's position with respect to others within each entity's advertising department indicates that the beneficiary has and would continue to operate at a high management level within her given department.

Accordingly, the AAO finds that the preponderance of the evidence standard has been met thereby establishing that the beneficiary was employed abroad and would more likely than not be employed in the United States 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.