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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



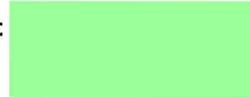
U.S. Citizenship
and Immigration
Services



DATE: FEB 05 2014

OFFICE: TEXAS SERVICE CENTER

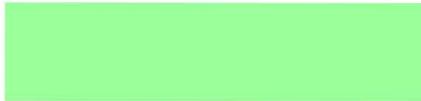
FILE:



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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg

Chief, Administrative Appeals Office

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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 appeal will be sustained.

The petitioner is a cruise line that seeks to employ the beneficiary as its Manager, Deck Manning, in its Shipboard Human Resources Department. 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.

The director denied the petition on September 24, 2013, after determining that: (1) the petitioner failed to establish that the beneficiary's proposed employment with the U.S. entity would be within a qualifying managerial or executive capacity; and, (2) the petitioner failed to establish that the beneficiary's employment abroad was within a qualifying managerial or executive capacity.

On appeal, the petitioner disputes the director's findings and provides an appellate brief laying out the grounds for challenging the 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.

Upon review, the AAO will withdraw the director's decision and sustain the appeal. The petitioner has provided sufficient evidence to establish that the beneficiary has been employed abroad and would be employed in the United States in a qualifying executive capacity.

The statutory definition of "managerial capacity" allows for both "personnel managers" and a "function managers." See sections 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)(i). 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).

The term "function manager," on the other hand, applies when a beneficiary does not directly 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. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *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)).

The director noted in the decision that the petitioner failed to submit sufficient evidence to establish that the beneficiary had been employed by the foreign company and would be employed in the United States in a qualifying managerial or executive capacity. However, the petitioner provided a detailed job description of the job duties performed by the beneficiary and provided detailed job descriptions and specific roles of every employee in the petitioner and the affiliate organization abroad.

On appeal, counsel for the petitioner contends that the beneficiary managed an essential function while employed abroad. Specifically, as Safety Officer, he reported directly to the Master and Staff Captain of the ship to which he was assigned, managing all aspects of shipboard safety and emergency systems related to guests and crew for the entire vessel. The petitioner established that the beneficiary directly and indirectly managed the safety function relating to approximately 400 crew members. Specifically, the beneficiary had managerial authority with respect to the following critical functions:

1. Safety and navigation equipment;
2. All safety and emergency equipment installed in engineering spaces;
3. All safety and emergency equipment installed in catering spaces;
4. All safety and emergency equipment installed in hotel spaces;
5. Fire doors, watertight and semi-watertight safety doors;
6. All safety and emergency equipment installed in the guest and public spaces; and
7. The ship's life boats and fire response systems.

To allow the broad application of the term "essential function" to include any minor or low-level function within a business would render the term meaningless. The term "essential" is defined as "inherent" or "indispensable." *Webster's II New College Dictionary* 392 (2005). Here, the petitioner has established that the safety and emergency systems that the beneficiary managed are critical and indispensable to the cruise line business and not a low-level or collateral tasking.

The petitioner also demonstrated that the beneficiary was not primarily performing non-qualifying tasks necessary to produce a product or service, but instead managing the essential duties and functions through direct or indirect subordinate employees. Section 101(a)(44) of the Act; *see also Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

Finally, the petitioner explains that in the proffered position of Manager, Deck Manning, the beneficiary "manages the activities of the Deck and Engine Officers for [the petitioner's] fleet of twenty-four luxury passenger vessels." The petitioner provided sufficient evidence to establish that the beneficiary will be employed in the U.S. in a primarily managerial capacity.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376

(AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). 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.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (discussing "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Here, the petitioner has submitted relevant, probative, and credible evidence that leads the AAO to conclude that the beneficiary will, more likely than not, be employed in an managerial capacity.

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.