U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JUL 15 2014 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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
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 The decision of the director will be withdrawn and the appeal will be sustained.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 multinational corporation that operates as a computer software development and consultancy business. The petitioner seeks to employ the beneficiary in the United States in the position of project 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.

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):
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> * * *
>
> (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.

After reviewing the petitioner's original supporting evidence as well as evidence that was provided in response to a request for evidence (RFE), the director determined that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity and therefore issued a decision, dated December 11, 2013, denying the petition. In issuing the adverse decision, the director took into account the fact that the beneficiary entered the United States in the H-1B nonimmigrant category, rather than as an L-1A intracompany transferee, finding this to be an indicator as to the beneficiary's employment capacity in his former position with the foreign entity. The director also found that the beneficiary's former employment included some non-qualifying job duties, which contributed to the adverse conclusion.

On appeal, counsel submits an appellate brief disputing the director's decision. Counsel questions the director's reliance on the beneficiary's U.S. entry in the H-1B nonimmigrant visa category as a proper indicator of the beneficiary's employment capacity in his former position with the foreign entity. Counsel also expounds on the beneficiary's prior job duties, the organizational structure within which he carried out those job duties, and the level of discretionary authority the beneficiary had over work matters and the professional personnel who reported to him. Counsel challenges the director's implication that the beneficiary's knowledge of information technology tools is an indicator that the beneficiary's time in his former employment with the foreign entity was devoted primarily to carrying out non-qualifying operational tasks. Lastly, counsel explains why the original job description, which the petitioner provided in the initial supporting statement, dated March 29, 2013, was different from the subsequent job description, which was included in the petitioner's RFE response statement, dated September 4, 2013. Specifically, counsel asserts that the second job description was intended to contain considerably greater detail based on the RFE instructions, which expressly indicated that one of the goals in issuing the RFE was to elicit further, more detailed information about the specific job duties the beneficiary performed during his employment with the foreign entity.

In general, when examining the executive or managerial capacity of the beneficiary, we consider the totality of the record; we do not limit our review to the job description of the position(s) in question. Therefore, while the director was correct in placing emphasis on the description of the beneficiary former employment with the foreign entity, we find that further analysis of other elements is required and that the beneficiary's job description should have been assessed in light of the organizational makeup and complexity of the division within which the beneficiary was placed in his prior position with the foreign entity. Here, having given thorough consideration to the beneficiary's job duties in light of these other highly relevant factors, we find that the record in its totality contains sufficient evidence and information to overcome the director's adverse determination.

While it is likely that the beneficiary did not allocate 100% of his time to managerial-level tasks, the petitioner provided sufficient evidence to establish that the non-qualifying tasks the beneficiary performed were only incidental to, rather than the focal point of, the position in question. 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 Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Contrary to the director's finding, the record in the present matter indicates that the beneficiary's placement within the former employer's organizational hierarchy, the professional employees whose work he supervised, and the management-level job duties he performed all indicate that beneficiary more likely than not allocated his time primarily to the performance of tasks within a qualifying managerial capacity, and that the petitioner has therefore provided sufficient documentation to meet the preponderance of the evidence standard. Accordingly, the director's decision must 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 sustained that burden.

ORDER: The appeal is sustained.