

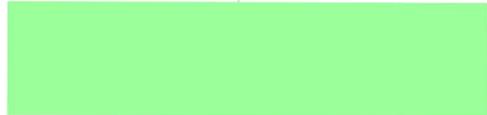


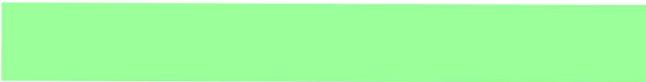
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: MAR 14 2014 OFFICE: TEXAS SERVICE CENTER



IN RE: 

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

 Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center ("the director") denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the appeal will be sustained.

The petitioner filed an Immigrant Petition for Alien Worker (Form I-140) 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 petitioner, a New Jersey corporation is an operator and manufacturer of amusement park rides. It seeks to employ the beneficiary in the position of General Manager.

In denying the petition, the director found that the petitioner failed to establish that: 1) the beneficiary was employed abroad in a qualifying managerial or executive capacity; and 2) the beneficiary 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 addressing expounding on the nature of the foreign and U.S. entities' respective business operations and the beneficiary's respective roles therein.

#### 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.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as follows:

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.

## II. THE ISSUES ON APPEAL

The director denied the petition based on a determination that the petitioner failed to establish: (1) that the beneficiary's former employment with the petitioner's foreign affiliate was in a qualifying managerial or executive capacity; and (2) that the petitioner would employ the beneficiary in a qualifying managerial or executive capacity. The director's findings were based, in significant part, on a finding that the petitioner failed to establish the beneficiary's supervision of professional employees. The director also found that the job descriptions submitted were general and failed to specify the duties performed on a day-to-day basis.

When examining the executive or managerial capacity of the beneficiary, the AAO reviews the totality of the record, starting first with the petitioner's description of the beneficiary's job duties. *See* 8 C.F.R. § 204.5(j)(5). The AAO also gives considerable weight to an entity's organizational hierarchy, the beneficiary's position therein, and evidence of a company's overall ability to relieve the beneficiary from having to primarily perform the daily operational tasks.

Therefore, while the director was correct in placing emphasis on the descriptions of the beneficiary's duties with the U.S. and foreign entities, this element must be assessed in light of a comprehensive analysis of the other relevant factors.

The record indicates that both the U.S. and foreign entities are equipped with sufficiently complex organizational structures with managerial tiers and lower-level employees. 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.

The director focused on the petitioner's failure to establish that the beneficiary would supervise a subordinate staff comprised of professional employees, but failed to consider that the beneficiary's roles with both the foreign and U.S. entities entail responsibility for managing subordinate supervisors. The petitioner established that the beneficiary has the authority to make hiring and firing decisions and that he did not and will not serve as a first-line supervisor of non-professional workers in his respective foreign and U.S. positions. *See* sections 101(a)(44)(ii) and (iii) of the Act.

The record also shows that the beneficiary's positions with respect to others within both entities are indicative of someone operating at a high management level within the organizational hierarchy. The petitioner further established that the beneficiary's foreign and U.S. positions both entail managing the organization or a significant component of the organization, and the authority to exercise discretion over the organization's day-to-day operations. *See* sections 101(a)(44)(A)(i) and (iv) of the Act. While the beneficiary's respective positions with the foreign and U.S. entities do not entail exclusively managerial or executive tasks, the beneficiary may be eligible so long as the record shows by a preponderance of the evidence that the beneficiary's time was and would be primarily allocated to tasks within a qualifying managerial or executive capacity.

In the present matter, consideration of the record in its totality reflects that the beneficiary's duties as described involve primarily qualifying tasks and that both the foreign and U.S. entities are sufficiently staffed for the purposes of relieving the beneficiary from being involved in the day-to-day operations of the respective businesses. Accordingly, the AAO finds that the preponderance of the evidence standard has been met, and the petitioner sustained its burden to establish that the beneficiary was employed abroad, and would be employed in the United States, in a qualifying managerial capacity. *See* section 101(a)(44)(A) of the Act.

III. CONCLUSION

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. Accordingly, the director's decision dated May 29, 2013 will be withdrawn and the appeal will be sustained.

**ORDER:** The appeal is sustained.