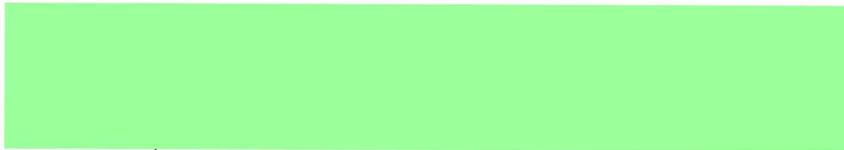


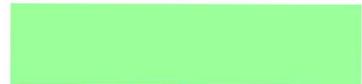


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: MAR 21 2014 OFFICE: NEBRASKA SERVICE CENTER

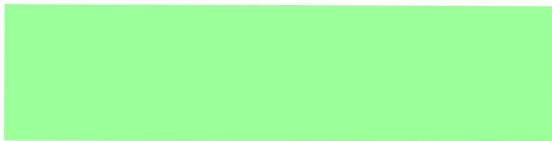


IN RE: Petitioner:  
Beneficiary:



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 "R. Rosenberg", written over the "Thank you," text.

Ron Rosenberg  
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 AAO will withdraw the director's decision and the appeal will be sustained.

The petitioner is an Ohio corporation with 47 employees and seeks to hire the beneficiary as its senior production 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.

On October 11, 2013, the director denied the petition, finding 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. The director made this determination by relying heavily on the job descriptions that the petitioner provided in its response to a July 15, 2013 request for evidence (RFE). With regard to the beneficiary's employment abroad, the director pointed out that the petitioner failed to provide job descriptions for the beneficiary's immediate supervisor and subordinate employees.

On appeal, [REDACTED] the petitioner's controller, provides an appellate brief along with additional supporting documents, which fully address the beneficiary's employment overseas as well as his proposed position with the petitioning U.S. entity. [REDACTED] acknowledges that the petitioner's RFE response contained a description of the beneficiary's prior position with the U.S. entity rather than the proposed position that is named in the Form I-140. He asks the AAO to consider the supplemental information provided on appeal, which includes the beneficiary's proposed job description as well as the missing job descriptions pertaining to the beneficiary's immediate supervisor and subordinate employees with regard to the prior position with the foreign entity.

#### 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.

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).

## II. Discussion

In general, when examining the executive or managerial capacity of the beneficiary, the AAO reviews the totality of the record and does not limit its review to the descriptions of the beneficiary's respective positions. Therefore, while the director was correct in placing great emphasis on the description of the beneficiary employment with the U.S. and foreign entities, a determination of the petitioner's eligibility requires further analysis of other relevant elements, including the staffing and organizational hierarchies of the beneficiary's respective employers, the nature of the business each entity conducts, and the staff available to relieve the beneficiary from having to allocate his time primarily to the performance of non-qualifying operational tasks of either employer. The beneficiary's job descriptions should be assessed in light of these factors.

After applying the proper analysis to the job descriptions, organizational charts, and other business documents presented in the matter at hand, the AAO finds that the petitioner provided sufficient documentation to meet the preponderance of the evidence standard, thereby establishing that the beneficiary was more likely than not employed abroad in a primarily managerial capacity and that he would more likely than not be employed in the United States in a qualifying managerial capacity as well. Both entities' organizational charts depict several managerial tiers, including the managerial occupied by the beneficiary in his prior employment abroad as well as his proposed employment within the petitioning entity. Additionally, the supplemental job descriptions provided on appeal help to clarify the beneficiary's respective roles as a personnel manager, overseeing the work of supervisory employees, who oversee subordinate employees of their own.

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.