

(b)(6)



U.S. Citizenship  
and Immigration  
Services

DATE: SEP 05 2014 OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

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

The petitioner is a Florida corporation with 40 employees that seeks to hire the beneficiary as its president and CEO. 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 September 4, 2013, the director denied the petition, finding that the petitioner failed to establish that the beneficiary 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 request for evidence. The director pointed out that the petitioner provided only five IRS Form W-2, Wage and Tax Statements, and thus failed to establish whether the individuals listed in its organizational chart were actually employed by the petitioner as claimed.

On appeal, counsel for the petitioner provides an appellate brief, which further addresses the beneficiary's proposed employment and is accompanied by additional supporting documents, including copies of the IRS Form W-2s issued by the petitioner in 2012, payroll documents, and the employer's quarterly reports listing the petitioner's employees and their respective salaries during the time period in which the petition was filed.

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 term "executive capacity" focuses on a person's elevated position within an organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the

organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

While the definition of "executive capacity" does not require the petitioner to establish that the beneficiary supervises a subordinate staff comprised of managers, supervisors and professionals, it is the petitioner's burden to establish that someone other than the beneficiary would carry out the day-to-day, non-executive functions of the organization.

In general, when examining the executive or managerial capacity of the beneficiary, we conduct a comprehensive review of the totality of the record. We do not limit our review to the beneficiary's job description. Therefore, while the director was correct in placing great emphasis on the description of the beneficiary's proposed employment with the petitioning organization, a determination of the petitioner's eligibility requires further analysis of other relevant elements, including its staffing and organizational hierarchy, the nature of the business the petitioner 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 his proposed employer. The beneficiary's job descriptions should be assessed in light of these factors.

Upon review of the job descriptions, organizational charts, and other business documents presented in the matter at hand, we find that the petitioner provided sufficient documentation to meet the preponderance of the evidence standard, thereby establishing that the beneficiary would more likely than not be employed in the United States in a qualifying executive 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)). Looking to the petitioner's organizational chart and corresponding payroll documentation, the petitioner has a managerial tier subordinate to the beneficiary, followed by a tier of first line supervisors who oversee the work of the petitioner's non-professional labor. Additionally, the supplemental information provided on appeal, when reviewed in light of the petitioner's sufficiently complex organizational hierarchy, further helps to clarify the beneficiary's executive role within the petitioning entity's organization.

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.