



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: APR 30 2015 OFFICE: NEBRASKA 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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

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

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 The decision of the director will be withdrawn and the appeal will be sustained.

The petitioner is a multinational corporation operating as a provider of multilingual e-business services. The petitioner seeks to employ the beneficiary in the United States as its global 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. In a decision dated January 30, 2014, the director denied the petition based on the finding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

On appeal, the petitioner disputes the denial and addresses the director's adverse findings in a supplemental brief, which contains a detailed explanation of the beneficiary's managerial role in his former position with the foreign employer. The petitioner also provides a comprehensive understanding of how the foreign entity's organizational hierarchy is structured.

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 "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).

On the other hand, the term "function manager" generally applies to a beneficiary whose primary tasks do not revolve around supervising or controlling the work of a subordinate staff. Rather, the term "function manager" applies to a beneficiary whose primary responsibility is 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.

A review of the facts presented in the instant record indicates that the beneficiary assumed the role of a function manager during his employment abroad. The record shows that the foreign entity operates a large scale operation with multiple tiers of management overseeing the work of professional employees, who possess the technical skills and knowledge required to meet the respective clients' needs. While the beneficiary's position admittedly included a client communication component, the percentage breakdown attributed to the beneficiary's former position with the foreign entity indicates that this aspect of the beneficiary's position did not comprise the "primary" portion of his time. Rather, the record indicates that the beneficiary exercised discretionary authority with respect to the projects he managed from defining each project's staffing requirements to choosing the strategies to be used to successfully execute the project.

Further, a review of the appeal shows that the petitioner provided detailed explanation of the beneficiary's role within the organizational scheme of the foreign entity, as well as an additional organizational chart, which contains an in-depth depiction of the beneficiary's position in the foreign organization and clarifies how his position was situated as compared to those who carried out the tasks necessary to provide the services offered to the company's clientele. Despite the various non-qualifying tasks that were inherently part of the beneficiary's role as project manager, we find that the record contains sufficient evidence to establish that the beneficiary's employment abroad was comprised primarily of qualifying managerial-level tasks.

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. Having examined the evidence contained in the instant record according to the preponderance of the evidence standard of proof, we find that the petitioner has provided probative credible evidence showing that the beneficiary was more likely than not employed in a qualifying managerial capacity.

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.

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NON-PRECEDENT DECISION

ORDER: The appeal is sustained.