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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: FEB 24 2015

OFFICE: NEBRASKA 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:

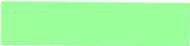
INSTRUCTIONS:

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.

All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office



DISCUSSION: The Nebraska Service Center Director denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner seeks to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is engaged in the production, marketing, and distribution of processed foods. It claims to be the parent company of the beneficiary's foreign employer, [REDACTED] located in Canada. The petitioner seeks to employ the beneficiary as a Continuous Improvement Internal Consultant.

The director denied the petition on July 28, 2014, concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to this office for review. On appeal, the petitioner asserts that it provided sufficient evidence to establish that the beneficiary would be employed in the U.S. in a qualifying managerial capacity. The petitioner submits a brief and additional evidence in support of the appeal.¹

I. THE LAW

Section 203(b) of the Act states in pertinent part:

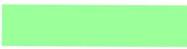
(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(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.

¹ We conduct appellate review on a *de novo* basis (See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)).



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.

In addition, Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

II. ISSUE ON APPEAL

A. U.S. Employment in a Managerial Capacity

The sole issue to be addressed is whether the petitioner established that it will employ the beneficiary in a qualifying managerial capacity. The petitioner does not claim that the beneficiary holds an executive position.

1. Facts

The petitioner is one of the world's largest producers, distributors and marketers of consumer foods, with more than 100 leading U.S. brands, 34,500 employees, and worldwide revenues of \$16.7 billion.

The petitioner has offered the beneficiary the position of Continuous Improvement (CI) Internal Consultant. The petitioner has consistently explained that she is responsible for providing leadership for the company's CI initiatives within its International Manufacturing organization. The petitioner stated that the beneficiary is responsible for overseeing the implementation of CI strategy and programs at 20 manufacturing sites located outside of North America. The petitioner further explained that the beneficiary directs and influences the work of Regional CI Leaders, Plant CI Leaders and Regional Supply Chain Directors as part of her responsibility for introducing and implementing the petitioner's CI program across its international manufacturing plants.

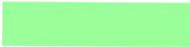
The petitioner provided an organizational chart for the Continuous Improvement Department showing that it is headed by a Vice President, Continuous Improvement & PMO, who supervises a CI Director – [REDACTED]. The beneficiary is depicted as one of ten employees reporting to the CI Director, along with other CI Consultants, CI Internal Consultants and CI Leaders.

In a request for evidence (RFE), the director asked the petitioner to provide a more detailed description of the beneficiary's duties and to clarify the levels of management within the beneficiary's department, whether she directly supervises subordinates, and, if applicable, to provide evidence that the beneficiary manages an essential function.

In response to the RFE, the petitioner provided additional evidence, including a more detailed description of the beneficiary's duties and the proportion of time she allocates to each of her responsibilities. The petitioner also provided a more detailed explanation of its Continuous Improvement program, which it describes as "the company-wide program focused on business optimization through minimizing cost and eliminating waste." The petitioner emphasized that it maintains a discrete Continuous Improvement department within its world headquarters-based Global Business Solutions organization, which underscores the importance of this program.

The petitioner further explained that the employees of the headquarters-based CI Department, including the beneficiary, fill senior management roles as they develop and implement critical CI policies, programs and initiatives for their assigned business units and functions across the organization. The petitioner emphasized that the beneficiary is the only international CI Internal Consultant in the department, and that her authority over the CI program encompasses a large manufacturing organization in 14 countries, as well as the International Supply Chain, which collectively employ thousands of employees.

The petitioner established that the beneficiary has five indirect subordinates, including the supply chain manager for China, the senior CI Leader for Australia, the Latin America Operations Business Manager, the CI Manager for Europe and the CI Manager for Brazil. The record shows that these regional managers



receive direction from the beneficiary as they work to roll out and maintain the petitioner's CI programs and strategies within individual plants outside North America and across the international supply chain.

Finally, the petitioner provided job descriptions for all the beneficiary's colleagues who report to the Director of Continuous Improvement at company headquarters, which clarified that each CI leader and consultant has a distinct area of responsibility with respect to the CI program.

In denying the petition, the director determined that the beneficiary performs several duties that are not managerial in nature, does not have personnel management authority over direct reports, and cannot be considered a function manager because the petitioner failed to establish that she serves in a high-level position within the CI function. The director observed that there are "several CI consultants or leaders at her level in the organizational hierarchy."

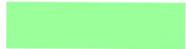
2. Analysis

Upon review of the record, we will withdraw the director's decision and sustain the appeal.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Here, the petitioner has submitted relevant, probative, and credible evidence that leads us to conclude that the beneficiary will, more likely than not, be employed in a managerial capacity.

In examining the claimed managerial capacity of the beneficiary, United States Citizenship and Immigration Service (USCIS) reviews the description of the job duties within the context of the totality of the record and weighs all relevant factors. These factors include the nature and scope of the petitioner's business, the petitioner's organizational structure and the beneficiary's position within it, the scope of the beneficiary's authority and its impact on the petitioner's operations, the work performed by other staff within the petitioner's organization; and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

The petitioner presented evidence, including a detailed description of the beneficiary's duties, which is sufficient to establish that her duties are primarily in nature. The petitioner stated that the beneficiary's critical role is to lead the petitioner's Continuous Improvement function across the company's International Manufacturing Organization, which encompasses manufacturing plants and international supply chain operations located in fourteen countries. The petitioner explained its Continuous Improvement program and established that it is considered an essential function within its global organization. The petitioner also established that the beneficiary has indirect reports who ensure that international CI strategies and initiatives are implemented at the regional and plant level. While the beneficiary may perform some duties that do not fall within the definition of "managerial capacity," the petitioner has demonstrated that such duties are incidental to her international oversight responsibilities.



The petitioner also established that the beneficiary, as a member of the Continuous Improvement organization at its world headquarters, performs at a senior level within respect to the Continuous Improvement function as it pertains to the company's international operations. While the beneficiary reports to a Director of CI, and there are several other employees who hold CI Internal Consultant positions in the same department, the petitioner has demonstrated that the beneficiary's responsibility for implementing the CI program on an international level represents a distinct function within the CI organization.

Based on the foregoing, the petitioner has established that the beneficiary manages an essential function within the petition organization, operates at a senior level within the petitioner's organizational hierarchy with respect to the international CI function she manages, and exercises discretion over the day-to-day operations of the CI program within respect to the international manufacturing and supply chain operations for which she has authority. Accordingly, the petitioner has established that the beneficiary will be employed in a qualifying manufacturing capacity and the appeal will be sustained.

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.

ORDER: The appeal is sustained.