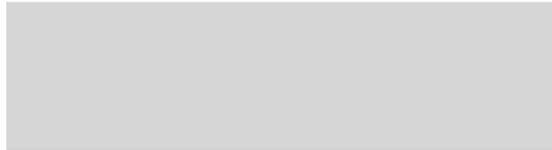




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 04 2015

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

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:



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 read "Ron Rosenberg".

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. 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 is a provider of broadband services and solutions. It seeks to employ the beneficiary as its vice president of marketing and business development and vice president of engineering.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States 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 us for review. On appeal, the petitioner submits a brief disputing the director's adverse findings.

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 the alien 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.

Additionally, the regulations at 8 C.F.R. § 204.5(j)(3)(i) state that the petitioner must provide the following evidence in support of the petition in order to establish eligibility:

(A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or

- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year.

II. U.S. Employment in a Management or Executive Capacity

The sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed in a qualifying managerial or executive capacity.

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.

The petitioner filed the Form I-140 on October 7, 2013. The petitioner states that it develops, operationalizes, and manages mobile broadband networks. The record shows that the petitioner had 13 employees in the United States at the time of filing. The petitioner also has two wholly-owned subsidiaries located in India and Slovenia. The record reflects that the beneficiary was the founder of the Slovenian subsidiary and served as its Chief Executive Officer prior to his transfer to the United States to work for the petitioner in L-1A nonimmigrant status.

The petitioner has offered the beneficiary the position of Vice President of Engineering and Vice President of Marketing and Business Development. The petitioner explained that, based on the company's current business needs and stage of development, the beneficiary allocates 80 percent of his time to managing the company's engineering department, and provided evidence that the company had five to six engineering professionals on its payroll at the time of filing who report to the beneficiary. The petitioner also provided evidence that it employs a product management director who reports to the beneficiary in his role as vice president of marketing. Finally, the record reflects that the company has a research and development department and two employees assigned to provide administrative, clerical, and special projects support to the company's senior management staff.

In denying the petition, the director acknowledged the beneficiary's professional subordinates in the engineering department, but focused on the apparent lack of subordinate staff to support the beneficiary's role as vice president of marketing and business development. On appeal, the petitioner reiterates that the beneficiary allocates 80 percent of his time to his engineering management role, as the company is still in the advanced stages of product development. The petitioner explains that it will shift additional resources to business development and marketing as dictated by its business needs, and states that the beneficiary currently allocates only 20 percent of his time to these activities.

Upon review, we find the petitioner's assertions persuasive. A review of the facts presented in the instant record indicates that the beneficiary is employed in a qualifying managerial capacity. The record indicates that the beneficiary exercises discretionary authority with respect to the activities of the engineering and business development departments he manages. *See* sections 101(a)(44)(A)(i) and (iv) of the Act. Further, the evidence of record establishes that the beneficiary supervises subordinate professionals who perform the non-managerial duties associated with development of the petitioner's products and services, and that he has full authority to hire and fire subordinate managers, supervisors and professionals. *See* sections 101(a)(44)(A)(ii) and (iii) of the Act.

Lastly, while the beneficiary likely allocates some portion of his time to high-level technical and business development duties, the petitioner has established that his duties are primarily at the senior management level.

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, we 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 evidence showing that the beneficiary is more likely than not employed in a qualifying managerial capacity.

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, the petitioner has met that burden. Accordingly, the director's decision dated August 11, 2014 will be withdrawn and the appeal will be sustained.

ORDER: The appeal is sustained.