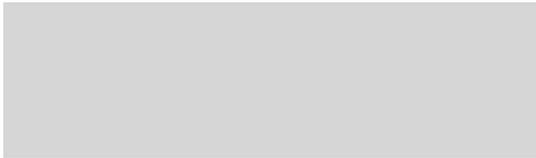




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 26 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE:

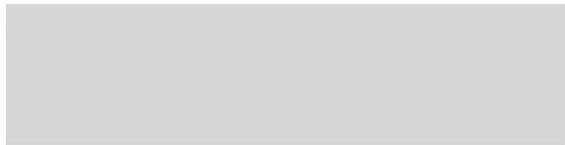
Petitioner:

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 employment-based immigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a ski-boot retailer headquartered in [REDACTED], Utah. The petitioner seeks to employ the beneficiary as manager of operations for its European market. 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.

The director denied the petition, concluding that the evidence of record did not establish that the petitioner: (1) will employ the beneficiary in a qualifying managerial or executive capacity in the United States; and (2) had employed the beneficiary in a qualifying managerial or executive capacity abroad.

The petitioner filed an appeal asserting that the director's decision was wrong and that the director had not sufficiently considered a previously filed and approved decision on the same issues. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, counsel 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 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.

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. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The issues to be addressed are: (1) whether the petitioner established that the beneficiary had been employed abroad in a primarily managerial or executive capacity; and (2) whether the petitioner established that the beneficiary would be employed in the United States in a primarily 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.

Finally, 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.

A. Facts

The petitioner filed its Form I-140, Immigrant Petition for Alien Worker, on October 9, 2013. The petitioner is a "volume ski boot retailer" and "orthotic retailer." The petitioner claims to have 25 retail locations throughout the United States, Canada, and Europe and these retail locations have showrooms with an average size of 700 square feet and \$3,000.00 in sales per square foot. The petitioner employs four senior level managers who each manage a different region of the business. The beneficiary was employed abroad as the European division manager overseeing six retail stores located throughout Europe.

The petitioner states that while the beneficiary was employed abroad he reported to the petitioner's president as manager of its wholly owned European subsidiary, [REDACTED]. The beneficiary worked in the position since October 2000. As manager of the petitioner's European operations, the beneficiary was required to regularly travel to all European store locations and to the company's corporate headquarters located in [REDACTED], Utah approximately six times per year.

The petitioner provided the beneficiary's detailed duty description abroad which allocated a percentage of time to specific tasks necessary to oversee the day-to-day operations including supervising store managers for seven European retail locations, hiring and firing employees, and working with corporate headquarters in the United States. The beneficiary oversaw growth and development of the European market and served as part of the company's senior management team.

As part of the initial petition and in response to the director's request for evidence (RFE), the petitioner provided an organizational chart listing the beneficiary's store managers by name and documents describing their duties and qualifications. The petitioner provided documentation describing duties performed by lower-level store employees who reported to the store managers. The petitioner provided names of lower-level employees and provided employee payroll information.

The petitioner now asserts that it intends to move the beneficiary's position to the United States. The beneficiary will continue to perform the same duties that he performed while employed abroad but he will be required to be physically based in the United States so that all senior employees would be "gathered under one roof" and work primarily in Utah at the petitioner's corporate headquarters. The petitioner provided documentation with a detailed description of the beneficiary's duties allocating a percentage of time that the beneficiary would dedicate to qualifying managerial tasks and responsibilities. The petitioner stated that the



beneficiary would be required to participate in all of its senior level meetings at its corporate offices where all of its marketing and expansion strategies are devised and all final decisions are made. The beneficiary would be based in the United States allowing him to work more closely with headquarters regarding the company's European growth but he would be expected to travel to Europe approximately twice per month.

The petitioner established that the beneficiary will continue to conduct ongoing performance evaluations of the European managers and would continue to be responsible for teaching them how to run the retail stores in accordance with established corporate policies and procedures. The petitioner states that the beneficiary would report directly to the company president and spend a majority of his time at the corporate offices when he was not traveling to Europe to oversee operations there. The petitioner states that the beneficiary will "operate at a senior level" and report to the petitioner's president.

The petitioner established that, while employed in the United States, the beneficiary would continue to manage all aspects of the European Operations, including oversight of the retail stores and development of a new store in [REDACTED] France. The petitioner stated that the beneficiary would supervise the continued development of the European market and oversee all future growth in that market. The petitioner described the beneficiary's duties establishing his day-to-day oversight of operations and the hiring and firing of personnel to staff all locations in his market.

The director denied the petition on September 4, 2014, concluding that the petitioner did not establish that the beneficiary had been employed in a primarily managerial capacity abroad or would be employed in a primarily managerial capacity in the United States. The director acknowledged that the beneficiary had store managers reporting to him but found that the documentation did not establish that the store managers had subordinate employees to establish them as supervisors. The director concluded that the beneficiary was not a functional manager based on the same lack of documentation of employees to assist the beneficiary in the performance of functions necessary to overall management.

On appeal, the petitioner asserts that the director erred. The petitioner referred to many individuals employed to work at the various retail locations and also noted the continuous rotation of seasonal workers that such an industry attracts. The petitioner asserts that the records contains sufficient evidence to establish that the beneficiary's role as the European division manager abroad and, now in the United States, qualifies as primarily managerial as required for approval of this petition.

B. Analysis

Upon review, the petitioner's assertions are persuasive.

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, more likely than not, was employed abroad and will be employed in the United States in a primarily managerial capacity.

The beneficiary currently manages a key subdivision or component of the petitioning company, namely its European subsidiary operations, has the authority to hire and fire personnel, supervises managerial or supervisory-level employees, and exercises discretion over the operation of six stores located throughout Europe. The record establishes that the beneficiary has managed and will continue to manage the petitioner's European operations under the supervision of the president of the U.S. company.

The petitioner now seeks to have the beneficiary physically present in the U.S. to join the rest of the senior leadership at the petitioner's corporate headquarters in Utah. The petitioner is expected to attend executive meetings and training sessions which are essential to the performance of his managerial duties, and which will allow the beneficiary to contribute along with other managerial staff to the formation of company policies and procedures. Although the beneficiary will be permanently based in the United States, he will continue to oversee the European operations through regular travel and communication with the European store managers.

III. CONCLUSION

The petitioner has established by a preponderance of evidence that the beneficiary manages the petitioner's European division and operates at a senior level within the organization's hierarchy, and that his primary duties, whether he is physically present in the United States or abroad, will continue to be in a managerial capacity. The petitioner has also demonstrated that the executive meetings and training sessions to be attended by the beneficiary in the United States are integral to the beneficiary's role as manager of the European operations.

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 sustained that burden. Accordingly, the director's September 4, 2014 decision is withdrawn.

ORDER: The appeal is sustained. The petition is approved.