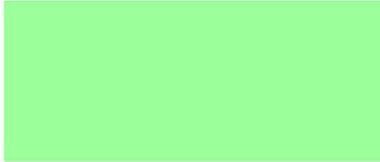




U.S. Citizenship
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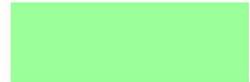


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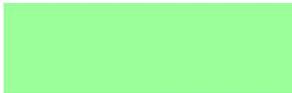
Office: NEBRASKA SERVICE CENTER

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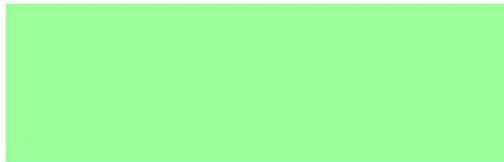
IN RE:

Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. 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
Acting 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 is an Oregon company engaged in the sales and distribution of steel pipes, and it seeks to employ the beneficiary as its Chief Executive Officer. 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 petitioner failed to establish that the beneficiary would be employed in the United States in a primarily 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 the AAO. On appeal, counsel asserts that the evidence of record is sufficient to establish that the beneficiary will be functioning in a managerial or executive position.

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 the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

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 that 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. *See* 8 C.F.R. § 204.5(j)(5).

II. The Issues on Appeal

The sole issue to be addressed is whether the petitioner established that the beneficiary will be employed in the United States in a managerial capacity. The petitioner does not claim that the beneficiary will be employed in an 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 indicated on the Form I-140, Immigrant Petition for Alien Worker, that it operates a steel pipe sales and distribution business with gross sales of \$7.6 million. The parent company, located in Korea, has 17 employees and a gross annual income of \$23.7 million. The petitioner stated the beneficiary will be working as its Chief Executive Officer. The petitioner explains that it was established to serve as the sales and liaison entity between the parent company and its U.S.-based clients and partners.

In support of the initial petition, the petitioner provided a multi-page position description for the beneficiary as Chief Executive Officer. The petitioner described how the proffered position will meet each of the required criteria of a manager. The petitioner stated that the beneficiary will be responsible for supervising

the petitioner's U.S.-based operations manager, as well as staff in Korea, in carrying out his duties as CEO. In addition, the petitioner stated that the beneficiary will direct five professional and managerial employees and their support staff within the parent company's accounting, overseas sales, and production team as it relates to accounting, sourcing, trade and distribution, and quality assurance of all steel products exported to the United States. The petitioner further explained the beneficiary would be managing the essential function of high-level sales and client management on behalf of the parent company. In addition, the petitioner emphasized that the beneficiary will be assigning and overseeing production projects valued at millions of dollars which comprise more than 30 percent of the parent company's annual sales.

Among other documentation, the petitioner also provided copies the petitioner's Internal Revenue Service (IRS) Form 941, Employer's Quarterly Federal Tax Return and Oregon Quarterly Tax Reports for all quarters of 2011, purchase orders and commercial invoices, sales/purchase reports for 2011, a company organizational chart, and a copy of the its 2010 IRS Form 1120, U.S. Corporation Income Tax Return.

The director issued a request for evidence ("RFE") requesting, *inter alia*, a detailed organizational chart showing all employees, titles, and job descriptions for the U.S. and foreign entities. In response, the petitioner submitted the requested organizational charts.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In denying the petition, the director determined that the petitioner's description of the beneficiary's job duties appears to "unrealistically inflate the importance of his position." This conclusion was based on the size and organizational structure of the U.S. company, which employs the beneficiary, the operations manager, and utilizes the services of two sales agents.

On appeal, counsel asserts that the evidence of record supports a finding that the offered position is managerial in nature. Specifically, counsel reiterates the petitioner's claims that the beneficiary will manage an essential function and that he is responsible for supervision of both U.S. and foreign employees who relieve him from most of the non-qualifying tasks associated with the operation of the U.S. company. Counsel contends that the director's conclusion that there are no employees to perform such support functions is contrary to the detailed information and evidence provided by the petitioner regarding the interdependency of the petitioner and its parent company with respect to the development of the U.S. market.

II. Analysis

Upon review, the petitioner's assertions are persuasive. The AAO finds sufficient evidence to establish that the beneficiary will be employed in a primarily managerial capacity.

The AAO agrees with counsel's contention that the director placed undue emphasis on the number of payroll employees working for the petitioner, and erred by failing to consider the contributions made by the staff of the petitioner's parent company and the sales agents utilized in the U.S. market. The petitioner provided a detailed description of the beneficiary's proposed duties, described the essential function he manages within the petitioner's group, and provided a detailed explanation of the nature of the activities conducted by the U.S.

and foreign entities. While the position description indicates that the beneficiary will be required to apply his technical knowledge of the company's products and production capabilities in carrying out certain aspects of his role, the evidence as a whole supports a finding that the majority of the beneficiary's time will be allocated to qualifying duties associated with the function he manages.

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the beneficiary's claimed managerial or executive capacity, including the petitioner's organizational structure, the duties any direct subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. In the case of a function manager, where few or no subordinates are directly supervised, these other factors may include the beneficiary's position within the organizational hierarchy, the depth of the petitioner's organizational structure, the scope of the beneficiary's authority and its impact on the petitioner's operations, the indirect supervision of employees within the scope of the function managed, and the value of the budgets, products, or services that the beneficiary manages.

The record reflects that the beneficiary, in addition to directly managing one professional employee in the United States, will work closely with and assign work to staff of the foreign entity that are tasked with operational and support duties related to the petitioner's business activities in the U.S. market. The petitioner has submitted detailed and credible explanations regarding the foreign staff's contribution to the petitioner's operation sufficient to establish that they, in addition to the U.S. employee and sales agents, are able to relieve the beneficiary from engaging in primarily non-qualifying operational or administrative tasks. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties. The petitioner has met that burden.

In addition, the petitioner has established that the beneficiary has been granted full discretionary authority with respect to the petitioner as a whole and within the context of the U.S. projects and client management functions he manages. The record reflects that he functions at a senior level within the overall organization with respect to the development of the U.S. market. Accordingly, the petitioner has established that it will employ the beneficiary in a 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. Here, the petitioner has sustained that burden. Accordingly, the director's decision dated June 6, 2011 will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained.