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U.S. Citizenship  
and Immigration  
Services

B4



File:

LIN 07 060 50083

Office: NEBRASKA SERVICE CENTER

Date:

JAN 06 2009

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)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the decision of the director and approve the petition.

The petitioner, a California corporation, develops audio signal processing systems and manufactures professional equipment to implement these technologies in the motion picture broadcasting and music recording industries. It seeks to employ the beneficiary as its marketing director, consumer electronics 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 claims that it is the parent of [REDACTED], the claimed foreign employer of the beneficiary located in Australia.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity. On appeal, counsel contends that the director committed three “key legal errors” and mischaracterized facts related to establishing whether the beneficiary was engaged in a primarily managerial or executive capacity. In support of this contention, counsel submits a brief and additional evidence.

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).

The issue in this matter is whether the beneficiary was employed abroad 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.

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

The term “executive capacity” means an assignment within an organization in which the employee primarily

- (i) directs the management of the organization or a major component or function of the organization;

- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In a letter of support dated December 18, 2006, the petitioner claimed that the beneficiary had been employed abroad in a managerial capacity from June 2004 until his entry into the United States on July 9, 2006. The petitioner described the beneficiary's position abroad as follows:

In his previous senior managerial position at [the foreign entity], he had full managerial responsibility over the management of [the petitioner's] product, brand and campaign developments. He led the creation and marketing of support brand launches, product promotion, and business objectives for [the petitioner's] licensing division. He coordinated business development in key geographical locations to support product design, brand strategy, and brand positioning.

In this supervisory managerial position, [the beneficiary] established development goals for his group that translated into performance objectives for each member. In this senior managerial position, [the beneficiary] had significant personnel management duties for a direct report, a managerial level employee. He supervised and controlled the work of the Marketing Communications Manager, including assigning tasks according to his knowledge and work experience. This employee possesses a Master's degree in his respective field. He had authority over personnel actions such as hiring, firing[,], compensation reviews, and promotions. As a Director of Marketing, Licensing Division, [the beneficiary] functioned at a senior level in our organizational hierarchy.

To his merit, [the beneficiary] had full managerial responsibility over setting policy and strategy for the Marketing Group and the Licensing Division as it pertains to the [petitioner's] product brand development. The value of this function to our organization was over several million. [The beneficiary] played an essential role in the development and management of Marketing Group and therefore operated at a senior level with respect to the function that he managed. He exercises his discretion over the day-to-day operations of this essential function. As a Director of Marketing, [the beneficiary] established goals and policies to ensure that the company's objectives were met in the Licensing Division under his direction. He established and determined policy goals consistent with the company's strategic business

development and objectives. He also directed and administered a budget of \$1 million for the management of brand development, and licensing and pricing development. He was responsible and accountable for the results of the marketing and the licensing division.

The petitioner concluded by stating that the beneficiary reported directly to the Vice President and the General Manager.

The director found the initial evidence insufficient to establish that the beneficiary had been employed abroad in a primarily managerial or executive capacity. Consequently, a request for evidence was issued on July 18, 2007. In the request, the director required the petitioner to submit a job description for the beneficiary which highlighted with more specificity his duties, in addition to documentation supporting the amount of time he devoted to each identified duty. Additionally, the petitioner was requested to submit an organizational chart showing the beneficiary's position within the organizational hierarchy.

In a response dated August 23, 2007, the petitioner addressed the director's requests. Regarding the beneficiary's duties, the petitioner provided a lengthy and detailed overview of beneficiary's duties, which is summarized below:

Management of the petitioner's product, brand and campaign developments, including setting policy and strategy for the Marketing Group and the Licensing Division as it pertains to the petitioner's product brand development. Average percentage of time spent on performing this job duty: 30%

Led the creation and marketing of support brand launches, product promotion, and business objectives for the petitioner's Licensing Division. Average percentage of time spent on performing this job duty: 25%

Coordinated business development in key geographical locations to support product design, brand strategy, and brand positioning. Average percentage of time spent on performing this job duty: 30%

Established development goals for his group that translated into performance objectives for each member. Average percentage of time spent on performing this job duty: 15%

Supervised and controlled the work of Marketing Communications Manager. The average percentage of time spent performing this job duty is included with duties a, b, c and d above.

In addition, the petitioner submitted an organizational chart which indicated that the beneficiary had one person, the Marketing Communications Manager, who reported to him directly. The petitioner further indicated that the beneficiary “also managed several external resources like consultants and agencies, to carry out his job duties and deliver results.”

On October 13, 2007, the director denied the petition. Specifically, the director concluded that a preponderance of the beneficiary’s duties appeared to have been associated with the selection and direction of outside agencies. Moreover, although the evidence indicates that the beneficiary oversaw one subordinate employee, the director concluded that this alone was insufficient evidence to demonstrate that the beneficiary would be relieved from performing non-qualifying duties. The director concluded that the beneficiary appeared to be more akin to a first-line supervisor than a bona-fide managerial employee.

On appeal, counsel claims that the director committed key legal errors in denying the petition. Specifically, counsel contends that the beneficiary’s position abroad was in fact managerial in nature, and addresses the qualifications of the beneficiary’s subordinate in relation to the beneficiary role in the company. Counsel also addresses the role of outside companies contracted to work for the foreign entity. Finally, counsel addresses the beneficiary’s qualifications in relation to the governing regulations.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner’s description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Both counsel and the petitioner provided a lengthy overview of the beneficiary’s duties in support of the petition and in the response to the request for evidence. The description of duties provided specific examples of the beneficiary’s responsibilities, and demonstrated that the beneficiary’s duties complied with the statutory definitions of managerial and executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act. Specifically, the petitioner provided an overview of a series of products called *Audistry*, and claimed that the beneficiary was primarily responsible for developing strategies for marketing this product globally. Additionally, and more importantly, the petitioner explained that the beneficiary would execute the above-stated job duties by utilizing three external companies retained by the foreign entity to provide essential professional-level services necessary for the petitioner’s successful marketing of *Audistry*.

According to the petitioner, the beneficiary oversaw one full-time managerial employee, namely, [REDACTED] who in turn directed and supervised the work of these three external companies in performing market research, advertising, and other related services necessary for the global expansion of this product. The petitioner provided an organizational chart demonstrating Mr. [REDACTED] position in the organizational hierarchy directly below the beneficiary, as well as letters, service agreements and invoices in support of the relationship between the petitioner and these three external entities. Moreover, this documentation evidences the working relationship between the petitioner and these three entities, and evidence on appeal specifies that [REDACTED] was directly responsible for communication and supervision of these entities. Therefore, the petitioner's claim that approximately \$600,000 of the petitioner's \$1.2 million marketing budget was allocated to the global marketing allocation for *Audistry*, which the beneficiary oversaw through the supervision of [REDACTED] has been substantiated.

Additionally, the record indicates that the beneficiary's supervision of [REDACTED] demonstrates his employment in a primarily managerial capacity. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. The petitioner submits documentation of [REDACTED] various degrees on appeal, which include a master's degree in marketing management from the University of Mumbai, a bachelor of arts degree from the University of Bangalore, and a diploma in advertising and marketing from the Xavier Institute of Communications. The petitioner also alleges throughout the record that [REDACTED] is a professional employee in charge of sub-contracted companies who globally market the petitioner's product, and therefore relieves the beneficiary from directly engaging in the marketing of the *Audistry* product.

In the instant case, the petitioner has submitted documentary evidence establishing [REDACTED]'s educational credentials. In addition, the petitioner claims that a bachelor's degree or above is required for [REDACTED]'s position as marketing communications manager, and it submits an in-house job description of the position of marketing communications manager, which indicates that the educational requirements for the position include a bachelor's degree or above, as well as a preference for a marketing degree and at least five years of functional marketing experience. Mr. [REDACTED]'s resume is also submitted, which indicates that he has more than fifteen years of prior marketing experience in managerial positions with companies such as Panasonic. Therefore, the AAO is satisfied that this evidence demonstrates that the beneficiary oversaw a professional employee while working for the foreign entity abroad.

The director concluded that the beneficiary acted as a "frontline supervisor" and was directly involved in the day-to-day functions of the company. However, a careful review of the foreign entity's organization, its global marketing strategy for the *Audistry* product, and the fact that half of the foreign entity's current advertising budget was allocated to this one specific project indicates that

the beneficiary was not merely a marketing or sales representative actively engaged in the promotion of the product. Rather, the evidence clarifies that the beneficiary delegated the marketing goals and strategies to the three external companies through [REDACTED] as a liaison, who in turn oversaw the work of these companies and reports back to the beneficiary. Therefore, the beneficiary was relieved from performing the marketing and sales functions, as discussed above, to produce and promote the petitioner's *Audistry* product.

For the reasons set forth above, the petitioner has demonstrated that the beneficiary was employed abroad in a primarily managerial capacity. Accordingly, the appeal will be sustained.

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.

**ORDER:** The decision of the director is withdrawn and the petition is approved.