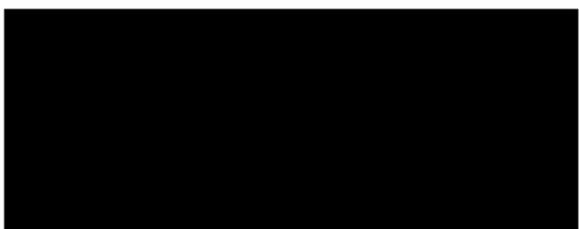




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY



34.

FILE:  OFFICE: NEBRASKA SERVICE CENTER Date: **DEC 30 2010**

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:


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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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 The decision of the director will be withdrawn and the appeal will be sustained.

The petitioner is a Minnesota corporation that seeks to employ the beneficiary as its president. 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 based on two independent grounds of ineligibility: 1) the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity; and 2) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity.

On appeal, counsel submits an appellate brief disputing the director's findings. Counsel also provided additional documentation addressing the beneficiary's employment abroad and with the U.S. entity. More in-depth information was also provided with regard to each entity's organizational structure, the beneficiary's placement and role within each organization, and the extent of the beneficiary's involvement in directing the management of each entity.

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.

The statutory definition of "managerial capacity" allows for both "personnel managers" and a "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(ii)(B)(3).

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

In the denial, the director placed great emphasis on the beneficiary's job descriptions and the job descriptions of his subordinates. The director also found that the petitioner failed to provide evidence of a professional, managerial, or supervisory staff that would relieve the beneficiary from having to primarily perform non-qualifying tasks. However, the evidence of record indicates that the director's assessment is inaccurate. The petitioner's organizational chart shows several levels of management that separate the beneficiary from having to directly oversee non-professional employees. The record also contains supporting evidence showing that the petitioner's Minnesota business was adequately staffed at the time the Form I-140 was filed. The petitioner similarly showed that the beneficiary's position abroad did not involve overseeing a staff of non-professional or non-managerial employees.

Therefore, while the director was correct in placing great emphasis on the descriptions of the beneficiary's duties, this element must be assessed in light of a comprehensive analysis of other relevant factors. As indicated above, such factors include an entity's overall organizational structure as well as the beneficiary's position with respect to others within the department or organization he managed or would manage. Consideration of these factors strongly indicates that both the petitioning and foreign entities are adequately staffed with subordinate first-line supervisors who would oversee the individuals assigned to perform the daily non-qualifying tasks. *Cf. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006)

In the present matter, the petitioner provided sufficient documentation to meet the preponderance of the evidence standard establishing that the beneficiary was and would more likely than not be employed in a primarily managerial or executive capacity as defined at sections 101(a)(44)(A) and (B) of the Act.

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. The petitioner in the instant case has sustained that burden.

ORDER: The appeal is sustained.