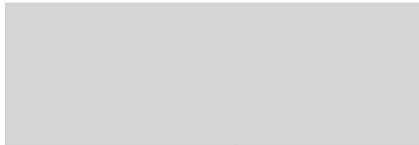




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 07 2015**

OFFICE: NEBRASKA SERVICE CENTER

FILE: 

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. Please be advised that all documents related to this matter have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, 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 Washington corporation that provides education consulting services. It seeks to employ the beneficiary as its president.

The director determined that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity and denied the petition in a decision dated August 7, 2014.

On appeal, the petitioner disputes the denial and addresses the director's adverse findings in a supplemental brief, which contains a detailed explanation of the beneficiary's role in her proposed position with the U.S. entity. The petitioner also incorporates a discussion of the beneficiary's support personnel, expanding the prior discussion of their respective roles within the petitioning entity and explaining how they would work together in supporting the beneficiary in her executive position as president of the petitioning 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.

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 which 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.

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.

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 managerial 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-day 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 denying the petition, the director focused heavily on the job description that the petitioner initially provided in support of the petition. Namely, the director found the initial job description to be overly vague and, in certain instances, overlapping with aspects of the job duties performed by the beneficiary's subordinate employees. Despite these cited deficiencies, the record shows that the petitioner provided a supplemental job in its response to the director's June 3, 2013 request for evidence (RFE) that was considerably more detailed than its initial description. Namely, the petitioner provided a comprehensive breakdown of the beneficiary's daily schedule, explaining which job duties she performs at specific times of the day and specifying the approximate percentage of time she allocates to the variety of tasks assigned to her in her top-most position within the petitioner's organizational hierarchy. The director did not reference this position description in the adverse decision.

The petitioner also explained how its operational and administrative tasks are allocated among the employees that comprise its organizational hierarchy, thus providing sufficient information to establish who, other than the beneficiary was available to carry out the company's non-qualifying tasks at the time the petition was filed and continuing through to present day. In addition, the petitioner provided sufficient evidence in the form of 2013 payroll records, IRS Form W-2 statements for 2013, as well as the petitioner's complete 2013

tax return, which show how much the petitioner paid in employee wages and salaries and exactly who was employed at the time of filing.

A review of the facts and documentary evidence presented in the instant record indicates that the beneficiary assumed and continues to assume a position within an executive capacity. While the record indicates that the beneficiary performs some non-qualifying tasks, the petitioner submitted sufficient evidence to establish that any non-qualifying components of the proposed position would not comprise the "primary" portion of her time. We note that no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks so long as the petitioner provides evidence to establish that the non-qualifying tasks the beneficiary would perform are only incidental to the proposed position. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Here, the record indicates that the beneficiary devotes the primary portion of her time to higher-level tasks that require her level of expertise and discretionary authority with respect to the educational programs she chooses to pursue and with respect to the immediate staff of managerial and professional employees the petitioner employed since filing the petition.

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, the director 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 executive capacity.

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.

ORDER: The appeal is sustained.