



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **APR 28 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. 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

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. We will sustain the appeal.

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, an information technology consulting service company, seeks to employ the beneficiary as its principal/business risk manager.

The director denied the petition, concluding that the petitioner failed to establish that: (1) the beneficiary was employed abroad in a qualifying managerial or executive capacity; and (2) the beneficiary would be employed in the United States in a qualifying 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 us for review. The petitioner submits a brief and additional evidence on appeal.

#### 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.

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.

## II. ISSUES ON APPEAL

### A. Foreign Employment in a Managerial or Executive Capacity

The first issue to be addressed is whether the petitioner established that the beneficiary was employed by the petitioner's foreign affiliate in a qualifying managerial or executive capacity.

#### 1. Facts

The record before us consists of the petitioner's initial evidence, the director's request for evidence and the petitioner's response, and the petitioner's detailed brief and additional evidence submitted on appeal.

The petitioner provided evidence that the beneficiary worked for its foreign affiliate in [REDACTED] India from June 2009 until December 2011, prior to entering the United States in L-1A nonimmigrant status in January 2012. The petitioner explained that from 2009 until 2010, the beneficiary served in the position of Principal/Delivery Partner assigned to oversee the planning

and execution of information technology consulting projects and other business development activities with respect to a major company client. Specifically, the petitioner indicates that the beneficiary supervised subordinate project managers and delivery managers responsible for client projects, and that these employees supervised professional consultants who provided services to the client. The petitioner's evidence includes a chart providing the names, job titles, educational level and brief descriptions of their duties and project responsibilities for the beneficiary's direct subordinates.

From 2010 to 2011, the petitioner indicates that the beneficiary held the position of Principal/Global Head of Operations and Staffing responsible for "overseeing staffing levels and fulfillment for open positions within the company's banking unit at a global level" in addition to performing other managerial duties that were fully discussed within the petition. The petitioner explained that during this time, the beneficiary managed a major expansion of the company's operations which required him to oversee the recruitment of over one thousand professional employees to staff a new office. The petitioner provided an organizational chart identifying the beneficiary's subordinates in his position as Global Head of Operations, which included an operations manager, multiple operations consultants, and a staffing lead.

The petitioner also listed the beneficiary's responsibilities as well as the percentage of time allocated to each of the duties described for both of his positions with the foreign entity.

The director's decision was based on a finding that the petitioner had not provided sufficient evidence of the number and types of subordinates managed by the beneficiary as delivery partner, and had not provided a detailed description of the beneficiary's duties as Global Head of Operations and Staffing.

On appeal, the petitioner reiterates the beneficiary's previously stated duties, further explains and documents the foreign affiliate's staffing levels, and further delineates the two distinct roles the beneficiary held while employed by the foreign entity.

## 2. Analysis

Upon review, the petitioner has established that the beneficiary was employed by the foreign entity in a managerial capacity.

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 was more likely than not employed in a qualifying managerial capacity in both his positions with the foreign entity.

In examining the claimed managerial capacity of the beneficiary, we review job duty description within the context of the totality of the record and weigh all relevant factors. These factors include the nature and scope of the petitioner's business, the petitioner's organizational structure and the beneficiary's position within it, the scope of the beneficiary's authority, the work performed by other staff within the petitioner's organization, and any other factors contributing to understanding of the beneficiary's actual duties and role in a business.

The petitioner has established that as Delivery Partner, the beneficiary managed the work of several senior level employees who managed consulting projects and supervised subordinate professionals responsible for delivery of projects to a key client. The petitioner provided evidence that it has a large organization devoted to this particular client and that the beneficiary managed a component of that organization, supervised subordinate managers and professionals, had the authority to hire, fire and make personnel decisions, and exercised discretion over the day-to-day activities of delivering these projects to the client. Further, the petitioner established that the beneficiary primarily performed these duties and that any non-qualifying duties he performed were tangential to his managerial role.

In his latter role as Global Head of Operations and Staffing, the beneficiary continued to work at a senior level within the same client-specific division, with responsibility for all IT recruitment and staffing functions on a global basis. The record reflects that he managed a defined component of the foreign entity's business, had ongoing responsibility for managing subordinate managers and professionals, hiring and firing, and exercised discretion over the day-to-day activities of this large-scale and on-going recruitment effort.

The petitioner has established by a preponderance of the evidence that the beneficiary's duties in both of these roles were primarily managerial in nature, while the day-to-day non-managerial tasks associated with the activities he managed were performed by other staff within the foreign entity's organization. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Accordingly, the director's determination that the beneficiary was not employed in a qualifying capacity abroad will be withdrawn.

#### B. U.S. Employment in a Managerial or Executive Capacity

The remaining issue is whether the petitioner established that the beneficiary will be employed in the United States in a qualifying managerial capacity.

##### 1. Facts

The petitioner's Form I-140, Immigrant Petition for Alien Worker, indicates that the beneficiary will be employed as a principal/business risk manager for its large computer consulting company that grossed \$496.49 million in 2012 and employs 1,900 in the United States.

The petitioner describes the beneficiary as a senior level manager with "overall responsibility for managing the Delivery Excellence and Business Risk Management in the Banking and Capital Market Domain." The petitioner explained that he is charged with "ensuring all current contracts and potential deals are thoroughly reviewed internally and all approvals are taken before the contracts are signed or the new business proposals are presented to the client." Further, the beneficiary's role is to "evaluate, assess, and highlight all delivery, business, operational and financial risks in current and potential business deals for North America Banking and Capital Market Business Units." The petitioner stated that the beneficiary regularly reviews and approves or disapproves deals worth a total of \$70 to \$80 million each month.

The petitioner provides a list of the beneficiary's 12 responsibilities as well as a percentage of time allocated to specific required duties and tasks. The petitioner also submitted an organizational chart dated July 2012 depicting the beneficiary as one of five direct subordinates to [REDACTED] Global Business Risk Manager in the company's Financial Services Global Business Unit, a senior vice president-level employee. The beneficiary is identified as Business Relationship Manager for North America for the Capital Markets and Banking business units.

The director subsequently issued a request for evidence and ultimately denied the petition concluding that the petitioner provided insufficient evidence to establish that the beneficiary is primarily performing qualifying duties or primarily managing a function. The director could not determine that the beneficiary would have employees to relieve him from primarily performing non-qualifying duties.

On appeal, the petitioner asserts that the beneficiary will serve at the "highest levels of the company" and that his position is "at the level of Principal." The petitioner states that the beneficiary's "responsibilities are overwhelmingly concerned with management and oversight of the critically important function of ensuring that the company takes on client engagements and new business that is profitable and within its operational resources." The petitioner explains that the beneficiary relies upon numerous employees such as financial analysts, operations analysts, accountants, project managers, legal staff and human resource managers to perform the tasks necessary to his successful management of this critical function. The petitioner also provides business documentation further demonstrating the beneficiary's role as manager of the business risk management function for the banking and capital markets business sectors in North America.

## 2. Analysis

Upon review, the petitioner has established that the beneficiary will be employed in the United States as a function manager.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. §

1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. 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).

The petitioner has established that Business Risk Management is an essential function within its international organization and that the beneficiary, as Principal and Business Risk Manager for North America, manages this function across multiple clients and business units in this region. The petitioner also established that he is placed at a senior level in the group's organizational hierarchy with respect to the function managed, as his direct supervisor is a senior vice president with global responsibility. The petitioner has provided specific examples of the beneficiary's discretionary authority to oversee this function, by relying on other staff to perform the financial, legal and technical research and analysis needed for him to ultimately determine whether to approve or reject contracts valued at up to millions of dollars. Finally, the petitioner established that he primarily performs high-level managerial duties, while any non-qualifying duties he performs remain tangential to his role.

Accordingly, the petitioner has established that the beneficiary will be employed in a qualifying managerial capacity and the appeal will be sustained.

### III. CONCLUSION

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 met that burden. Accordingly, the director's decision dated September 24, 2014 will be withdrawn and the appeal will be sustained.

**ORDER:** The appeal is sustained.