



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 05 2015

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
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 filed this Immigrant Petition for Alien Worker (Form I-140) 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 Delaware corporation engaged in the production and marketing of food, agriculture, financial, and industrial products and services. It seeks to employ the beneficiary in the position of investment associate. The beneficiary was previously employed as an investment associate by the petitioner's subsidiary in Argentina.

The director denied the petition, concluding that the evidence of record did not establish that the beneficiary: (1) was employed abroad in a qualifying managerial or executive capacity; or (2) 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. On appeal, the petitioner submits a brief disputing the director's adverse findings and additional evidence, including an expert opinion letter, in support of its assertion that the beneficiary was employed abroad and will be employed in the United States in a qualifying managerial capacity.

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 the alien 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.

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. Employment in a Managerial Capacity

The issue to be addressed is whether the petitioner established that the beneficiary was employed abroad and would be employed in the United States in a qualifying managerial capacity.

The petitioner provided evidence that the beneficiary was employed by the foreign entity as an investment associate responsible for overseeing and independently managing real estate and loan portfolios as well as developing investment strategies and objectives. The beneficiary's principal investment project was the management of the business turnaround of a 450,000 square foot retail and entertainment development. The petitioner explained that, in this role, the beneficiary coordinated the work of professionals involved in the execution of contracts, transactions and asset management, such as analysts and brokers, and provided direction to external asset managers and executives to ensure investment turnaround. The petitioner provided a detailed description of the beneficiary's duties and an organizational chart.

With respect to the beneficiary's position in the United States, the petitioner provided evidence including a detailed description of his current duties as an investment associate, noting that he serves as a principal manager for the company's expansion into emerging Latin American markets. The petitioner explained that the beneficiary continues to have management

responsibility for real estate and loan portfolios, as well as corporate securities. The petitioner explained that the beneficiary relies on both internal and external staff in order to perform his duties and has the authority to recommend personnel actions related to recruitment, termination and employee incentives. The petitioner further emphasized that the beneficiary reports to an executive-level Managing Director and has principal responsibility for developing the company's corporate securities business in the Latin American regions and in Argentina. The petitioner identified a senior operations analyst, a corporate counsel, and a risk analyst who work under the beneficiary's indirect supervision and provided descriptions of their job duties. The petitioner also provided examples of how the beneficiary is supported by the company's professional staff and examples of how he oversees external investment asset managers in order to carry out his responsibilities.

The director ultimately denied the petition based on a finding that the beneficiary's previous foreign and current U.S. investment associate roles are not in a managerial capacity because he does not supervise managers or professionals, but rather works *with* other managers and professionals. Further, the director determined that the petitioner had not established that the beneficiary functioned or will function at a senior level in the company's organizational hierarchy. Finally, the director acknowledged that while the beneficiary may be the key organizer of various temporary projects, the record did not reflect that the beneficiary is managing the organization, or a department, subdivision, function or component of the organization. Accordingly, the director concluded that the beneficiary's former and current investment associate position does not meet the definition of managerial capacity as defined by section 101(a)(44)(A) of the Act.

On appeal, the petitioner objects to the director's conclusion that the beneficiary's project-based work is temporary in nature and therefore cannot constitute management of a department, subdivision, function or component of the organization. The petitioner emphasizes that the petitioner need only establish that the beneficiary's managerial assignment is ongoing, and asserts that the regulations do not allow for the disqualification of a manager who oversees individual or finite projects as part of their managerial assignment. The petitioner explains that "it is precisely part of [the beneficiary's] long-term assignment to manage temporary or short-term projects," as the nature of the company's investment business is to regularly have new investment opportunities and projects. The petitioner asserts that investment management is critical to both the petitioner's and the foreign entity's business and is a managerial function.

In support of the appeal, the petitioner submits a letter from Dr. [REDACTED] Professor of Finance at the [REDACTED] who offers his professional opinion on the nature of the beneficiary's responsibilities. He concludes that, within the context of the petitioner's business, the beneficiary's responsibility to independently develop business opportunities, exercise discretion to negotiate loans valued at tens of millions of dollars, and negotiate and manage contractual relationships are all performed at the managerial level. Further, he states that the beneficiary's projects require him to perform high-level work because he provides direction to high-level managers of acquired assets.

Upon review, we find the petitioner's assertions persuasive. A review of the facts presented in the instant record indicates that the beneficiary was employed abroad and will be employed in the United States in a managerial capacity as a function manager. The nature of the beneficiary's role requires him to primarily manage high-value projects that are temporary in nature, but the project-based nature of the assignments does not preclude a finding that the beneficiary's role as an investment associate, both in Argentina and in the United States, has required him to manage a component or function of the organization. Within the context of the petitioner's operations, the management of projects based on portfolio or geographic region can be considered an essential function of the organization. *See* section 101(a)(44)(A)(i) and (iii) of the Act.

Further, the record indicates that the beneficiary has exercised and will continue to exercise substantial discretionary authority with respect to the activities of the multimillion dollar projects he undertakes and manages. *See* section 101(a)(44)(A)(iv) of the Act. In addition, the record reflects that the beneficiary, both in the United States and abroad, reports directly to a managing director, and is placed at a senior level within the petitioner's hierarchy with respect to the projects he undertakes. While the beneficiary does not have a permanent staff of direct subordinate employees, and did not directly supervise staff in Argentina, the record indicates that he has the authority to request whatever internal resources he needs to successfully carry out the project he undertakes, and the authority to guide and provide direction to the asset management teams of projects in which the petitioner's group makes a substantial investment.

Lastly, while the beneficiary may allocate some portion of his time to analytical or research duties that are not managerial in nature, the petitioner has established that his duties as an investment associate, both in Argentina and in the United States, have been and will be primarily at the senior management level.

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 (AO 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, we 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 managerial capacity, and that he was more likely than not employed in a qualifying managerial capacity abroad.



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 August 4, 2014 will be withdrawn and the appeal will be sustained.

ORDER: The appeal is sustained.