



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: MAR 13 2015

OFFICE: TEXAS SERVICE CENTER

FILE: [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:

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 relating 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, Texas Service Center ("the director"), denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a developer, manufacturer, and supplier of medical devices that seeks to employ the beneficiary as its Manager, North America Field Inventory and Logistics. Accordingly, 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.

On February 20, 2014, the director denied the petition determining that the petitioner failed to establish that its Canadian subsidiary employed the beneficiary in a managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary managed an essential function of the Canadian company as the employee in charge of the foreign entity's Field Inventory Department. The petitioner submits a brief and additional evidence in support of the appeal.¹

I. THE LAW

To establish eligibility for the employment-based immigrant visa classification, the petitioner must meet the criteria outlined in section 203(b) of the Act. 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.

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. The language of the statute is specific in limiting this provision to only those executives and managers who have previously

¹ We issued a request for evidence on December 17, 2014 and have incorporated the petitioner's response into the record of proceeding.

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. THE ISSUE ON APPEAL

The issue in this proceeding is whether the petitioner submitted sufficient evidence to establish that the beneficiary was employed in a qualifying managerial capacity with the petitioner's foreign subsidiary.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See sections 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. § 204.5(j)(4)(i). 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. § 204.5(j)(2).

The term "function manager," on the other hand, applies when a beneficiary does not directly 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).

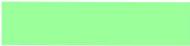
In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered 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); see also *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

The petitioner identified the beneficiary's specific area of responsibility as control and management of company field inventory which included design and implementation of strategies, being a contact point for other units, and management of medical equipment team coordinators.

The evidence of record establishes that the beneficiary, while serving as Bilingual Medical Equipment Lead for the Canadian entity, directly managed two employees and also managed a critical function, functioned at a senior level with respect to the function managed, and coordinated the daily activities of numerous employees in relation to the function. Specifically, the petitioner submitted evidence which indicates that, in 2009, the beneficiary was promoted to manage all aspects of the company's field inventory throughout Canada. The petitioner states that in addition to directly managing two direct reports, she also indirectly managed and coordinated all employees in the [REDACTED] comprised of 30-40 employees working in various departments, including Regulatory Affairs, Service and Logistics, Finance and Operations, and Marketing. The petitioner also provided specific examples of the beneficiary's management of the field inventory function and submitted a chart identifying the beneficiary's responsibilities and interaction with the employees and their training as well as the creation of policies for the departments of technical services and repair, information systems, distribution and logistics, finance, medical education, field sales, and marketing, as those departments relate to the company's field inventory.

Upon review, the petitioner has established that the beneficiary directly managed the field inventory function through indirect management of employees working in various departments. Specifically, the beneficiary had managerial authority with respect to the field inventory critical functions, including evaluation of medical equipment, testing of medical equipment, properly packaging and shipping equipment, recovering medical equipment, and overseeing internal assembly of medical equipment.

The petitioner also submitted examples demonstrating that the beneficiary was not primarily performing non-qualifying tasks necessary to produce a product or service, but instead managing the essential duties and functions of the field inventory department through direct or indirect subordinate employees. Section 101(a)(44) of the Act. See also *Boyang, Ltd. v. I.N.S.*, 1995 WL 576839; *Matter of Church Scientology Int'l*, 19 I&N Dec. at 604.



The totality of the record in this matter includes not only the beneficiary's job description for the foreign entity, but also the organizational structure, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the foreign entity's business, and other factors that contribute to understanding of the beneficiary's role for the foreign entity. Upon our review, the record includes sufficient evidence to establish that the beneficiary had been employed in a bona fide function manager position for the foreign entity. Accordingly, the director's decision will be withdrawn and the appeal will be sustained.

III. CONCLUSION

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. Accordingly, the director's decision is withdrawn. The appeal will be sustained.

ORDER: The appeal is sustained.