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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
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Washington, D.C. 20536

[redacted]

APR 29 2003

File: SRC 00 100 51846 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:
This is the decision 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.

PUBLIC COPY

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.[1]

The petitioner is a corporation engaged in the business of providing airport security. It seeks to employ the beneficiary as its assistant airport manager in San Francisco. Accordingly, it seeks 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 determined that the beneficiary appeared to primarily be a first-line supervisor of non-managerial, non-supervisory, and non-professional employees. The director concluded that the petitioner had not demonstrated that the beneficiary was eligible for the classification of multinational executive or manager.

On appeal, counsel for the petitioner asserts that the beneficiary qualifies as both a function manager and a manager of managerial employees.

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):
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> * * *
>
> (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

[1] The AAO is fully aware that significant changes have taken place in airport security operations since the filing and adjudication of this petition. However, based on the evidence before the director on February 22, 2001, the date the director's decision was made, the petitioner had met its burden of proof on the issue of the beneficiary's eligibility and the I-140 petition should have been approved. If the facts in the present case have changed so that the petitioner's business has been terminated or the beneficiary no longer qualifies, the approval of this petition may be subject to revocation pursuant to section 205 of the Act.

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 the firm, corporation, or other legal entity, or an affiliate or subsidiary of that entity, and 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 that 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 petitioner has its principal office in the state of Georgia. The petitioner represents that it and the beneficiary's previous foreign employer, Aviation Defence International (ADI), are wholly-owned subsidiaries of the United States parent corporation AHL Services, Inc. and are thus affiliates.

The issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed in a primarily managerial capacity for the United States company.

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.

The petitioner provided its organizational chart for its San Francisco airport station depicting an airport manager, the beneficiary's position as an assistant airport manager, five duty managers reporting to the beneficiary, and 20 customer service representatives, 100 pre-departure screeners, and 280 special service employees all reporting to the five duty managers. The petitioner's description of the beneficiary's job duties was consistent with its organizational chart.

The director determined however, that the petitioner had not adequately demonstrated that the 280 special service employees reported to an intermediate supervisor(s) and not directly to the beneficiary. The director concluded that the beneficiary was the direct line supervisor of 280 employees and that as these employees were not managers, supervisors or professional employees, that the beneficiary did not meet the criteria for a multinational executive or manager.

On appeal, counsel states that the evidence previously submitted and a letter from the regional manager/airport manager submitted on appeal are emphatic that the beneficiary manages five managers. Counsel asserts that the evidence submitted confirms that the beneficiary satisfies the requirements for either a functional manager or a manager of employees.

On review, the record is persuasive in establishing that the beneficiary has been and will be employed in a managerial capacity. The petitioner has credibly explained that the beneficiary manages five managerial employees who supervise over 400 employees. The petitioner has provided sufficient evidence to establish that the beneficiary manages a component of the petitioner, supervises management employees, has authority to recommend hiring and firing as well as functioning at a senior level in the organizational hierarchy, and exercises discretion over the petitioner's day-to-day screening operations at its San Francisco airport station.

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, that burden has been met.

ORDER: The appeal is sustained.