



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF P-P-S-A-, INC.

DATE: AUG. 29, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a provider of clinical product development services, seeks to permanently employ the Beneficiary as its senior project manager under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish, as required, that it has a qualifying relationship with the Beneficiary's employer abroad or that the Beneficiary was employed abroad and would be employed in the United States in a managerial capacity.

On appeal, the Petitioner submits a detailed brief addressing all three grounds for denial and explaining how the Petitioner and the Beneficiary qualify for the benefit sought.

Upon *de novo* review, we find that the Petitioner has provided sufficient evidence to overcome the grounds for denial. Therefore, we will sustain the appeal.

I. LEGAL FRAMEWORK

Section 203(b)(1)(C) of the Act makes an immigrant visa available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate.

A United States employer may file Form I-140, Immigrant Petition for Alien Worker, to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. The Form I-140 must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of

the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. 8 C.F.R. § 204.5(j)(3).

II. QUALIFYING RELATIONSHIP

To establish a “qualifying relationship” under the Act and the regulations, a petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e., a U.S. entity with a foreign office) or related as a “parent and subsidiary” or as “affiliates.” *See generally* section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(i)(C).

Here, the Petitioner claims an affiliate relationship with the Beneficiary’s former employer abroad. The Director found that the Petitioner submitted insufficient evidence to support its claim that both the petitioning entity and the Beneficiary’s foreign employer are ultimately owned by the same Swiss company. Specifically, the Director found that the Petitioner did not submit primary evidence reflecting the transfer of ownership from its original Swiss parent company to its current Swiss parent company.

Upon review of the record, we find that the Petitioner’s submission of an extract from the “Register of Commerce,” filed with a Swiss government authority credibly documents the merger of the two Swiss entities in question and the current parent company’s acquisition of all assets of the original Swiss parent company. As the current parent company is also the majority owner of the Beneficiary’s foreign employer, the Petitioner has established that the two entities have a qualifying affiliate relationship.

III. EMPLOYMENT IN A MANAGERIAL CAPACITY

The Director further determined that the evidence did not establish that the Beneficiary was employed abroad and would be employed in a managerial capacity as defined at section 101(a)(44)(A) of the Act; 8 U.S.C. § 1101(a)(44)(A). The Beneficiary was employed abroad and would be employed in the United States in the position of senior project manager.

In the denial decision, the Director found that the Petitioner did not provide sufficiently detailed descriptions of the Beneficiary’s foreign and U.S. positions. However, the Director mainly focused on the submitted organizational charts for the U.S. and foreign entities, where he noted discrepancies in the Beneficiary’s role, job title, and level of authority with respect to the international project management function she is claimed to manage.

On appeal, the Petitioner explains the foreign employer’s and the Petitioner’s respective management and staffing hierarchies in greater detail, and clarifies who performed the primary portion of the operational tasks associated with the essential function that the Beneficiary has managed and will continue to manage. We note that the statute does not require the Beneficiary to allocate 100% of her time to managerial-level tasks, so long as the Petitioner demonstrates that the non-qualifying tasks the Beneficiary performed abroad and would perform in her proposed U.S. position were and would be only incidental to the respective positions. The Petitioner need only show that the Beneficiary’s duties were and would be “primarily” managerial. *See* section 101(a)(44)(A) of the Act.

We find that the Petitioner has met this burden by clarifying prior ambiguities about the departmental chain of command that is common to the Beneficiary's former and proposed positions. The explanation provided on appeal conveys a better understanding of the Beneficiary's level of discretion with respect to the essential function and her managerial role with respect to those who performed and would perform the underlying operational tasks associated with the function. The record also substantiates that both companies' project management staff use both official and functional job titles, a practice that appears to have led to the Director's observation that there were inconsistencies in the submitted organizational charts. These discrepancies have been resolved.

Overall, the record now establishes that the role of senior project manager required and will require the Beneficiary to primarily manage the essential international project management function, to operate at a senior level with respect to this function, and to exercise discretion over the day-to-day operations of this function on a global basis.

Accordingly, we find that the Petitioner sustained its burden of establishing that the Beneficiary was employed abroad and would be employed in the United States as a function manager.

IV. CONCLUSION

As the Petitioner has overcome all stated grounds for denial, the appeal will be sustained.

ORDER: The appeal is sustained.

Cite as *Matter of P-P-S-A-, Inc.*, ID# 505925 (AAO Aug. 29, 2017)