



U.S. Department of Justice

Immigration and Naturalization Service

BH

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



PUBLIC COPY

File:

Office: TEXAS SERVICE CENTER

Date: FEB 1 2001

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)

IN BEHALF OF PETITIONER:



identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

May C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a Florida corporation that claims to engage in the import and export of computer-related products for its parent company, [REDACTED] located in Brazil. The petitioner seeks to employ the beneficiary as its vice president and, therefore, endeavors to classify her as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director of the Texas Service Center denied the petition because the petitioner failed to establish that the beneficiary is currently and will continue to be employed in an executive or managerial capacity for the U.S. entity, or that the beneficiary was employed in an executive or managerial capacity with the foreign entity. On appeal, counsel does not submit a brief.

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 petitioner and counsel do not claim that the beneficiary is an executive, but rather, a manager who manages an essential function of the company's operations.

8 C.F.R. 204.5(j)(2) states, in pertinent part:

Managerial capacity means an assignment within an organization in which the employee primarily:

(A) Manages the organization, or a department, subdivision, function, or component of the organization;

(B) 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;

(C) 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

(D) Exercises direction over the day-to-day operations of the activity or function for which the employee has authority.

The first issue in this proceeding concerns the nature of the beneficiary's job duties with the U.S. entity. In his denial, the director concluded that the beneficiary functions at a senior level and manages an essential function; however, because the beneficiary also performed nonqualifying duties, which were the focus of the beneficiary's responsibilities, the beneficiary was not working primarily as a manager.

On appeal, counsel claims that the director erred in his finding, but does not present any argument in support of her claim. Without evidence to show that the director erred in his reasoning, this office is not inclined to withdraw the director's decision on appeal. The evidence in the record supports the director's finding that the beneficiary does not work in a primarily managerial role.

First, the petitioner submitted a Form ETA with the initial I-140 petition, in which it described the beneficiary's duties. These duties included tasks such as the following:

1. Coordinate the import/export activities of all components, modems and other products
2. Prepare statistical and comparison reports
3. Examine invoices and shipping manifests for conformity with tariff and customs regulations
4. Plans distribution to customers and negotiates with producers to arrange purchase and delivery of products

Counsel claims that the beneficiary manages an essential function, but does not identify the essential function. The above tasks may be essential to the petitioner's operations, but these tasks are nevertheless, non-managerial and non-executive in nature. Instead of managing these tasks and other activities through other

employees, the beneficiary personally performs these job responsibilities. Thus, the record indicates that the beneficiary is working in a capacity of a business analyst, instead of a manager.

Furthermore, the evidence indicates that the beneficiary is also working in a capacity as a salesperson, rather than a manager. According to the petitioner, the petitioner sold and bought more than \$2 million worth of goods in 1998. The petitioner does not employ any salespersons, and its only other employee works in a clerical/secretarial capacity. Absent evidence to the contrary, it appears that the beneficiary is primarily responsible for all import and export sales. An individual who performs the services and/or provides the goods of a company does not work in a capacity that is primarily managerial.

As neither the petitioner nor counsel has presented any argument to show how the director erred in finding that the beneficiary does not work in a primarily managerial capacity, the decision of the director on this issue is affirmed.

The next and final issue to be examined is whether the beneficiary was employed by the foreign entity in a managerial capacity for at least one year in the three years preceding her entry into the U.S. On appeal, counsel merely states that the petitioner would not send the "lowest-ranking employee to build-up the U.S. subsidiary" as evidence to show that the director's conclusion was in error. As with the previous issue, counsel's claim is not persuasive.

The petitioner described the beneficiary as an "import/export analyst." Although the petitioner claimed that the beneficiary functioned as an administrative manager, the petitioner failed to clarify the meaning of this position title. Many of the duties that the petitioner attributed to the beneficiary in her job for the U.S. entity are the same duties the beneficiary executed for the foreign entity. As the Service does not find that the duties of the beneficiary within the U.S. entity are primarily managerial, then the same finding stands for the beneficiary's duties within the foreign entity. The director's denial of the petition on the basis that the beneficiary was not employed in a managerial capacity overseas is also affirmed.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.