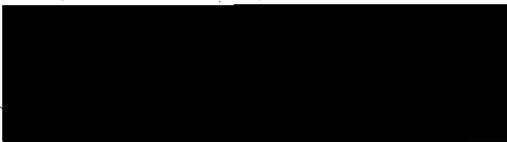




U.S. Department of Justice
Immigration and Naturalization Service

B4

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



PUBLIC COPY

File:

Office: VERMONT 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

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was approved by the Director, Vermont Service Center. Upon further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke the approval of the preference visa petition. The director ultimately revoked the approval of the petition on October 18, 1999. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a New Jersey corporation that claims to engage in the import and export of products produced by its parent company, [REDACTED] Products Import & Export Co., located in the People's Republic of China. The petitioner seeks to employ the beneficiary as its 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 Vermont Service Center ultimately revoked the approval of 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. On appeal, the petitioner submits a letter in support of its claim that the beneficiary works as an executive; copies of its 1998 corporate tax returns and W-2, wage and earning statements, for its employees; and job descriptions of its 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):

* * *

(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.

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

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

(A) Directs the management of the organization or a major component or function of the organization;

(B) Establishes the goals and policies of the organization, component, or function;

(C) Exercises wide latitude in discretionary decision-making; and

(D) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

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 director revoked the approval because evidence in the record indicated that the beneficiary was performing the day-to-day functions of the company, and because the petitioner submitted a vague and generalized job description for the beneficiary.

On appeal, the petitioner claims that it submitted very detailed descriptions of the beneficiary's daily activities in its initial I-140 petition and subsequent responses to the director's requests for additional evidence. The petitioner also claims that because the beneficiary has made two significant and successful business decisions, she is necessarily an executive.

The petitioner's arguments are not persuasive, and do not overcome the director's decision to revoke the approval of the petition.

First, the petitioner has consistently submitted the same job

description for the beneficiary in its various responses to the director's requests for additional information. It is a job description that contains generalized statements and does not provide any insight into the beneficiary's daily activities.

For example, the petitioner claims that the beneficiary performs "essential executive functions;" yet, does not detail what constitutes these alleged essential executive functions. The petitioner also claims that the beneficiary is "guiding the company through the web of American, Chinese and other international laws and regulations concerning the import and export of goods;" yet, also fails to state the types of duties the beneficiary must execute in order to guide the company. Such a generalized job description does not establish that the beneficiary directs the management of the organization.

Second, the petitioner, on appeal, submits an unrealistic breakdown of the beneficiary's weekly duties. The petitioner claims that the beneficiary establishes "the company management structure, office rules, operation guidelines, and communication protocol between offices abroad and within the U.S." for five hours each week. The Service contends, however, that a company's management structure and its office rules are not changed on an ongoing weekly basis, as the petitioner claims. Therefore, the Service cannot find that the breakdown of the beneficiary's weekly duties accurately depicts her job responsibilities in order to show that she establishes goals and policies, and exercises wide latitude in discretionary decision-making.

Finally, and more importantly, the evidence indicates that the beneficiary primarily works in a capacity as a salesperson, rather than as an executive or manager. According to the petitioner, the petitioner sold and bought more than \$1.6 million worth of goods in 1998 in an organization that employs a president (beneficiary), one business manager, one salesperson and one support staff member. It is not plausible that the petitioner could sell the amount of merchandise it claimed with only one salesperson and two individuals working in primarily executive or managerial capacities. The organizational structure of the petitioner leads the Service to conclude that the beneficiary is performing nonqualifying duties as a salesperson. An individual who performs the services and/or provides the goods of a company does not work in a capacity that is primarily managerial or executive.

The two examples that the petitioner presents on appeal as evidence that the beneficiary functions in a primarily executive role are not persuasive. Although the beneficiary may have made two business decisions on behalf of the company, there is no evidence that the beneficiary performs this type of duty on a primary basis.

As neither the petitioner nor counsel has presented any persuasive argument to show that the director erred in his finding, the

decision of the director that the beneficiary does not work in a primarily executive or managerial capacity is 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.