



U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC 98 245 51887

Office: CALIFORNIA SERVICE CENTER

Date: JAN 8 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:



Public Copy

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

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

The petitioner is a California corporation that claims to be a casting agency. It seeks to employ the beneficiary permanently in the United States as the company's president and, therefore, endeavors to classify him a multinational executive or manager 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 California Service Center denied the petition because the petitioner failed to establish that the beneficiary is currently and will continue to be employed in a primarily managerial or executive capacity with the U.S. entity, and because the petitioner failed to establish that the foreign entity has been doing business.

On appeal, the petitioner submits a statement.

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 first issue to be examined is the nature of the beneficiary's job duties for the U.S. entity. In denying the petition, the director concluded that the beneficiary's primary job is as a casting agent, rather than an individual who performs executive or managerial duties for a casting agency. On appeal, counsel states that "[t]he evidence establishes that [the] beneficiary manages an essential function within the organization, that is the business development of the company." Counsel does not elaborate on her statement.

Counsel's claim is not persuasive. Pursuant to 8 C.F.R.

204.5(j)(5), a petitioner must submit a job offer in the form of a statement, which clearly describes the duties to be performed by the alien. The petitioner did not submit a statement that described the beneficiary's duties, as required by the regulation. The only descriptions of the beneficiary's role within the company are found on the I-140 petition and in a letter from counsel to the Service in response to an August 10, 1999 request for additional information.

In the I-140 petition, the petitioner states that the beneficiary would be "responsible for establishing business policies including staffing levels, contract negotiating and financing." Counsel claims the following:

Beneficiary functions in an executive capacity. He directs a major component of the corporation, its business development, and in that capacity has built petitioner into one of the ten leading casting firms in Hollywood. While it is true that the company does not have a large number of full-time employees, beneficiary is not in charge of the day-to-day functioning of the company although he has final authority over staffing levels and policy. In addition to its workers, petitioner also utilizes the services of several independent contractors which include a payroll service as well as a casting supervisor.

The job descriptions of both the petitioner and counsel are vague. Neither description provides any insight into the beneficiary's daily activities. By using general terms to describe the beneficiary's activities for the U.S. entity, the petitioner has not met the regulatory requirement outlined in 8 C.F.R. 204.5(J)(5).

Counsel claims on appeal that the beneficiary manages an essential function; yet, the record does not contain any evidence to support this claim. According to counsel, the essential function that the beneficiary manages is the company's business development; however, counsel does not detail how the beneficiary manages this function. As the director correctly concluded in her denial of the petition, the beneficiary appears to work as a casting agent, and an individual who performs the services and/or provides the goods of an organization does not work in a primarily executive or managerial capacity. Counsel has not shown how the director's conclusion was inconsistent with the evidence in the record. Although counsel claims that the beneficiary manages an essential function, such a claim, which is not supported by any documentary evidence, is not found persuasive. The assertions of counsel do not constitute evidence. Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel's claim that the beneficiary manages an essential function is also undermined by the petitioner's organizational structure. According to an organizational chart submitted by the petitioner, the company is comprised of the beneficiary (president), an office manager, and a part-time administrative assistant. The petitioner did not submit job descriptions for the positions of office manager or administrative assistant, which would enable the Service to determine each individual's role within the company's hierarchy, as well as the distribution of job responsibilities. Absent evidence to the contrary, the Service can only conclude that the beneficiary, in his role as an agent, performs the majority of the day-to-day functions, rather than directing those functions through other individual employees.

Counsel asserts that the beneficiary provides executive and/or managerial services for the petitioner; yet, states that the beneficiary is not in charge of the day-to-day functioning of the company. If the beneficiary is not in charge of the day-to-day functions, then he performs the day-to-day functions. As neither counsel nor the petitioner presented any additional evidence or argument to show how the director erred in finding that the beneficiary does not work in a primarily executive or managerial capacity, the decision of the director on this issue is affirmed.

The next issue in this proceeding is whether the foreign entity has been doing business in order to qualify the beneficiary as a multinational executive or manager.

According to 8 C.F.R. 204.5(j)(2), "multinational" means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States. To establish that an entity, affiliate or subsidiary conducts business, the record must establish that both the foreign and the U.S. entities regularly, systematically and continuously provide goods and/or services.

The record indicates that the beneficiary is the sole owner of the foreign entity in Kuwait, which allegedly sells [redacted] pancake makers to [redacted] countries. As evidence that the foreign entity has been conducting business, the petitioner submitted a list of employees and copies of a few invoices. The director reasonably concluded that the evidence the petitioner submitted was not persuasive. Although the petitioner listed the names of the foreign entity's alleged employees, it did not submit any payroll records or describe the employees' job responsibilities in the company. Counsel did not state how the director's conclusion on this issue was in error, and without copies of financial statements, balance sheets, or tax records, the Service cannot find that the foreign entity has been and will be engaged in the regular, systematic and continuous conduct of business in Kuwait.

The petitioner has failed to establish that the beneficiary meets the definition of "multinational executive or manager." The mere fact that the beneficiary has an executive title and indirectly owns the petitioner does not qualify him for approval of an immigrant petition pursuant to section 203(b)(1)(C) of the Act.

Additionally, while not addressed by the director in her denial of the petition, the record does not support a finding that the beneficiary was employed by the foreign entity in an executive or managerial capacity for at least one year in the three years preceding his entry into the U.S.

The petitioner did not state the beneficiary's title or describe, in any way, the beneficiary's job responsibilities for the foreign entity. Counsel, on appeal, claims that the evidence showed that the beneficiary functioned in a managerial capacity for the foreign entity; however, the evidence to which counsel refers does not exist. Without a detailed description of the beneficiary's role with the foreign entity, the Service cannot find that the beneficiary was employed in an executive or managerial capacity with the overseas entity for at least one year in the three years immediately preceding the beneficiary's entry into the U.S.

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.