



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

[Redacted]

File: [Redacted] Office: NEBRASKA SERVICE CENTER Date:

JAN 8 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

Identifying data needed to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a Missouri corporation that claims to import textile products that have been manufactured by its parent company, Mughees Textiles, located in Pakistan. It seeks to employ the beneficiary as its vice president of marketing and, therefore, endeavors to classify him 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 issue to be examined in this motion is whether the beneficiary is currently and will continue to be employed in a primarily executive or managerial capacity. On motion, counsel submits a brief. The petitioner submits evidence of its financial stability and documents concerning the import of its products to the U.S.

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.

On motion, counsel argues that the petitioner previously submitted ample documentation concerning the beneficiary's managerial and executive role within the company, including a detailed job description for the beneficiary. According to counsel, the job description shows that the beneficiary functions at a senior level within the organization, manages an essential function, and has complete control over the company's daily operations.

Counsel also argues against a basis for the denial of the petition and the dismissal of the appeal, which was the employment of only two individuals by the petitioner. Counsel asserts that even though the petitioner employs two individuals, the beneficiary does not perform any nonqualifying duties.

Counsel's arguments are not persuasive. The Service does not find that the beneficiary is employed in a primarily executive or managerial capacity because the record contains conflicting information regarding the corporate structure of the petitioner, which calls into question the beneficiary's job capacity with the U.S. entity.

The petitioner has claimed that it employs the beneficiary as the vice president of marketing and Dr. [REDACTED] as the president. According to counsel in the initial I-140 petition, the beneficiary was supervised by the president, and the petitioner claimed in the initial I-140 petition that it was "headed" by Dr. [REDACTED] (president). These statements clearly indicate that the beneficiary, by virtue of his title and position within the company, is in a subordinate role to the president, Dr. [REDACTED]. However, in her appeal brief and on motion, counsel claims that the beneficiary controls the U.S. entity through the president, Dr. [REDACTED] as the following illustrates:

Further, the beneficiary also exercises discretion over the day to day operation of these functions in that he directs Dr. [REDACTED] in the administrative and clerical operations of the company relating to customer contact, placing orders, customs payment, and other marketing functions... Dr. [REDACTED] provides all necessary clerical and administrative support for beneficiary's marketing activities... Further, Dr. [REDACTED] purchases airline tickets and makes hotel reservations through the Internet as needed for [REDACTED]'s marketing related travel. He also telephonically arranges express mail and [the] purchase of office supplies through company accounts...

On motion, counsel emphasizes that the president, Dr. [REDACTED], executes all of the non-executive and non-managerial functions; yet, in its initial I-140 petition, both counsel and the petitioner portrayed [REDACTED], as the individual who has ultimate authority over the company's operations in his position as president. It is inconsistent for counsel to claim that Dr. [REDACTED] works in a primarily clerical capacity under the direction of a subordinate employee, when counsel previously stated that Dr. [REDACTED] is the beneficiary's immediate supervisor.

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 Service cannot find the beneficiary's job description credible because evidence submitted in the initial I-140 petition concerning the roles of the beneficiary and the president contradicts evidence on the same issue that has been submitted on appeal and on motion. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Matter of Ho, 19

I&N Dec. 582, 591 (BIA 1988). Therefore, the Associate Commissioner's dismissal of the appeal on the basis that the beneficiary does not meet the definition of executive capacity or managerial capacity is affirmed.

Beyond the decision of the director and the Associate Commissioner, the record does not support a finding that the petitioner can pay the proffered wage of \$40,000 per year.

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

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

On motion, the petitioner submits a copy of its 1998 corporate income tax return, which shows that it paid \$20,000 in wages in 1998. According to counsel, these wages were paid to the president. When one adds the depreciation of \$6,659 (Line 20) and the taxable income of \$10,827 (Line 28), the result is \$17,486. The amount of \$17,486 is insufficient to pay the proffered wage of \$40,000 to the beneficiary. As the matter will be dismissed on the grounds discussed, this issue need not be examined further.

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 met that burden.

ORDER: The decision of the Associate Commissioner dated August 12, 1999 is affirmed.