



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: EAC 98 201 50957

Office: VERMONT SERVICE CENTER

Date: JAN 18 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:

SELF-REPRESENTED

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

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was filed, which was dismissed by the Associate Commissioner for Examinations. A motion to reconsider is now before the Associate Commissioner for Examinations. The motion will be denied.

The petitioner is a New York corporation that claims to be engaged in international marketing and investments. It seeks to employ the beneficiary as its president 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, the petitioner presents several reasons why the Associate Commissioner for Examinations should reconsider its dismissal of the previous appeal. Each reason will be separately addressed in this decision.

First, the director denied the I-140 petition because the organizational structure of the petitioner was not developed; the petitioner employed the beneficiary as president and the beneficiary's wife as vice president, with no other employees on the company payroll. On appeal, the petitioner reasons that because it has made recent investments in several tourist attractions, it can now support a position that is primarily executive or managerial.

The petitioner's arguments are not persuasive on this point. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). The Service may not consider the petitioner's recent investments because such investments occurred after the filing of the initial I-140 petition. The record reflects that at the time the petition was filed, the beneficiary's duties were not primarily executive or managerial because the petitioner failed to show how the day-to-day operations of the company were being accomplished. Without evidence to the contrary, the director reasonably concluded that the beneficiary's primary tasks were not managerial or executive.

Second, the petitioner claims on appeal that the beneficiary manages an essential function; however, this claim is also 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 (beneficiary). Although the director requested a detailed job description, the petitioner described the beneficiary's job duties in only vague and general terms, by stating the following:

"The preparation for this process, the development of international investment program - those are the primarily [sic] tasks now ought to be managed by Mr. Troitskiy in the United States. So the duties of Mr. Troitskiy under present circumstances at this particular stage we could defy [sic] as managing a business function. We believe that 100% of his working hours Mr. Troitskiy now devotes to fulfilling this business goal using 100% of his authority in every action he may see appropriate and fit to achieve the possible final result. He routinely reports his duties to the Board of Directors for mutual effort coordination and general guidance provided by the Board.

In this job description, the petitioner has not clearly described the essential function that the beneficiary allegedly manages. It appears that the petitioner is claiming that the beneficiary manages its international investments; however, the petitioner failed to demonstrate how he manages this function. Again, absent evidence to contrary, the Service must conclude that the beneficiary performs the day-to-day tasks of an essential function rather than manages an essential function.

Finally, on motion, the petitioner claims that it hires outside professionals as part of its business operations, which relieves the beneficiary from performing nonqualifying duties. As evidence, the petitioner submits a chart, which shows that the petitioner contracts outside personnel in the areas of construction, securities management, business consulting, and real estate. Information on this chart does not support a finding that the beneficiary serves in a primarily executive or managerial capacity. None of the services the petitioner contracts is related to the essential function that the beneficiary allegedly manages, which is international investments. Without a detailed job description that includes the beneficiary's daily activities, the Service cannot find that the beneficiary is a multinational executive or manager. Neither the beneficiary's title as president, nor the amount of investment he has made in the petitioner, compel the Service to conclude that the beneficiary's primary role is in an executive or managerial capacity.

Based upon evidence in the record, the petitioner has not established that the prior decisions of the director and the Executive Associate Commissioner for Examinations should be withdrawn.

Beyond the decisions of the director and the Executive Associate Commissioner for Examinations, the record does not support a finding that the petitioner has the ability to pay the proffered wage of \$750 per week (\$39,000 per annum).

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.

The petitioner's 1997 corporate income tax return shows that it paid \$13,770 in wages, and did not have any depreciation or a taxable income (Line 20 and Line 28, respectively). According to the petitioner, the \$13,770 in wages were paid to outside agencies for their services. With a taxable income of \$0, the petitioner has not shown that it had the ability to pay the proffered wage of \$750 per week at the time it filed the petition in July 1998.

Although the petitioner claims on motion that the beneficiary has sufficient personal funds to support himself in the U.S., this fact does not relieve the petitioner from satisfying the aforementioned regulatory requirement.

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 motion is denied.