



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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PUBLIC COPY



File:

Office: VERMONT SERVICE CENTER Date: JAN 25 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:

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. On 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, and ultimately revoked the approval of the petition on November 10, 1999. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a [REDACTED] that claims to engage in the import and export of various products and commodities. It 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 revoked the petition because the evidence in the record did not support a finding that the beneficiary is currently and will continue to be employed in an executive or managerial capacity for the U.S. entity. On appeal, counsel submits a brief. The petitioner submits a copy of the petitioner's quarterly federal tax return for the quarter that ended on September 30, 1999, and copies of cancelled checks that evidence its salespersons were paid commission, and that it employed outside contractors.

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 issue in this proceeding concerns the nature of the beneficiary's job duties. The director based his revocation of the approval on four factors. First, the petitioner failed to show that it employed any employees other than the beneficiary and the manage [redacted] on a full-time basis. Second, the petitioner did not sufficiently establish that it employed the commissioned sales representatives it claimed. Third, the petitioner's job description did not show that the beneficiary primarily functions as a manager or executive. Finally, the \$2 million in gross receipts indicates that the beneficiary functions in a capacity as a salesperson.

On appeal, counsel presents three arguments in rebuttal to the director's denial. First, in response to the director's notice of intent to revoke the petition, the petitioner submitted copies of canceled checks to show that it paid commission fees. Second, the

job responsibilities that the petitioner listed in the initial I-140 petition were both managerial and executive. Finally, because the Service previously approved an L-1A nonimmigrant petition and subsequent renewals of the beneficiary's L-1A status, the director's revocation of the immigrant petition, which is based upon the same facts, is an abuse of discretion.

Counsel's arguments are not persuasive.

First, copies of the cancelled checks the petitioner submits on appeal show that money was paid to outside personnel; however, the petitioner did not submit any information along with the checks to show what services were provided to the petitioner, and the period of time such services were allegedly rendered. Therefore, the copies of the cancelled checks are not persuasive in establishing that the petitioner's organizational structure is sufficiently developed and can support a primarily executive or managerial position.

Second, 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 job description that the petitioner submitted contains generalized statements and does not provide any insight into the beneficiary's daily activities.

In the initial I-140 petition and in response to the director's request for additional information, the petitioner used broad statements to describe the beneficiary's duties, as the following illustrates:

Planning and formulating policies

Directing and coordinating two departments ... implement managerial system ...

Direct and conduct the marketing research on Asia countries shipping and related commodity's sources...

Overseeing day to day overall administrative and business operations of the U.S. company

The petitioner claims that the beneficiary plans and formulates policies; yet, does not detail how the beneficiary executes these tasks. The petitioner also claims that the beneficiary directs and coordinates two departments; yet, 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 or manages the organization.

Third and finally, the petitioner's breakdown of the beneficiary's weekly duties shows that the beneficiary's primary job function is

neither executive nor managerial. For example, the petitioner claimed that the beneficiary reviews and analyzes reports for five hours each week; conducts market research for four hours each week; performs budget allocation for five hours each week; and negotiates contracts for five hours each week. This breakdown indicates that approximately 50% of the beneficiary's weekly job duties are non-managerial and non-executive, as they constitute the day-to-day functions of the organization.

The petitioner has not met the regulatory requirement of 8 C.F.R. 204.5(j)(5) because a detailed job description was not submitted in support of the I-140 petition. In addition to being vague, the job description that the petitioner did submit showed that the beneficiary does not spend the majority of her time performing executive or managerial duties. Neither counsel nor the petitioner has presented any persuasive evidence or argument on appeal to overcome the director's decision to revoke the prior approval of the petition.

Counsel suggests on appeal that this petition must be approved because the beneficiary was previously granted nonimmigrant classification as an L-1 executive/manager. The director's decision does not indicate whether the beneficiary's nonimmigrant file was reviewed. Copies of the initial L-1A nonimmigrant visa petition and supporting documentation are not contained in the record of proceeding. Therefore, it is not clear whether the beneficiary was eligible for L-1A classification at the time of the original approval, or if the approval of the L-1A nonimmigrant classification involved an error in adjudication. However, if the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in this immigrant petition, the approval would constitute clear and gross error on the part of the Service. As established in numerous decisions, the Service is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See, e.g., Sussex Engg. Ltd. v. Montgomery, 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988); Matter of Church Scientology Int'l., 19 I&N Dec. 593, 597 (BIA 1988). Therefore, the director's denial 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.