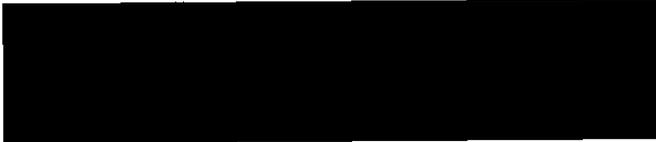




U.S. Department of Justice
Immigration and Naturalization Service

B4

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



File: EAC 99 076 52336

Office: VERMONT SERVICE CENTER

Date:

JAN 30 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.

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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, Vermont Service Center. The matter is now on appeal before the Associate Commissioner for Examinations. The appeal will be sustained.

The petitioner is a New York corporation that supplies specialized electronic components, test equipment, and services to the international telecommunications and networking industries. The petitioner seeks to employ the beneficiary as its applications engineering manager and, therefore, endeavors to classify the beneficiary 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 denied the petition because the petitioner failed to establish that the beneficiary is currently and will continue to be employed in a managerial capacity. It is noted that the beneficiary has been employed by the petitioner in L-1A status since 1997.

On appeal, counsel submits a brief. The petitioner submits a letter in behalf of the beneficiary, and letters from the petitioner's corporate clients, who attest to the types of services the beneficiary provides to them in behalf of the petitioner.

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.

Both counsel and the petitioner are seeking classification of the beneficiary as a multinational manager, not as a multinational executive. 8 C.F.R. 204.5(j)(2) states, in pertinent part: .

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 presented the following reason for denying the petition on the basis that the beneficiary was not currently working and would not continue to work in a primarily managerial capacity:

Despite his job title, and your contention that the beneficiary is managing the engineering function, and your plans to enlarge your engineering staff, the evidence of record does not establish that the beneficiary is presently engaged, or will immediately engage in, primarily managerial duties.

The director failed to specify what particular evidence in the record did not establish that the beneficiary occupies a primarily managerial role with the petitioner. Although the director noted that the beneficiary does not supervise anyone, the regulation does not require a manager to supervise subordinate employees, as long as that manager manages an essential function.

Contrary to the director's finding, the evidence of record, which includes evidence submitted on appeal, shows that the beneficiary is the manager of an essential function and, therefore, he qualifies as a multinational manager.

First, the petitioner meticulously described the function over which the beneficiary has authority and control, and why this particular function is essential to the petitioner's operations.

Second, even though the beneficiary does not directly supervise managerial, supervisory or professional employees, he, nevertheless, provides guidance to these types of employees who are directly supervised by other managers in other departments. This

type of indirect supervision of employees is one way the beneficiary manages the essential function.

Third, the organizational charts and the job description of the beneficiary indicated that the beneficiary occupies a senior role within the company's organization, and has complete discretion over the essential function he manages.

Finally, the petitioner sufficiently described the daily activities of the beneficiary to lead to a conclusion that the beneficiary exercises complete discretion over the day-to-day operations of the essential function he manages.

The evidence in the record enables the Service to conclude that the beneficiary's primary role within the U.S. company fits the definition of managerial capacity noted in 8 C.F.R. 204.5(j)(2). Therefore, the director's objections on this issue have been overcome.

As always, 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 sustained that burden.

ORDER: The appeal is sustained.