



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



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JAN 30 2001

File: EAC 98 144 51853 Office: VERMONT SERVICE CENTER Date:

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:



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

The petitioner is a New York corporation that claims to engage in the import and export of rice. The petitioner seeks to employ the beneficiary as its president and chief executive officer 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 of the Vermont Service Center denied the petition because the petitioner failed to establish that the beneficiary was employed in an executive or managerial position for at least one year with a qualifying overseas entity, and 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 its recent bank account statements and copies of recent purchase orders for rice.

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 first issue to be examined is whether the beneficiary was employed in an executive or managerial capacity with a qualifying overseas entity for at least one year in the three years immediately preceding the beneficiary's entry into the U.S.

The director denied the petition on this basis because the petitioner failed to submit an organizational chart for the overseas entity, a detailed description of the beneficiary's job duties, and a breakdown of the number of hours the beneficiary devoted to each of his job duties during the week. These three pieces of evidence were requested by the director in his July 30, 1998 request for additional evidence.

On appeal, counsel states that the petitioner previously submitted a copy of the foreign entity's payroll records, which showed that the beneficiary was employed by the foreign entity prior to his entry into the U.S. This piece of evidence, however, is insufficient.

In order to meet its burden of proving that the beneficiary was employed as an executive or manager for the foreign entity, the petitioner must submit evidence beyond mere payroll records. The

petitioner must submit a detailed job description, which would support its claim that the primary job duties of the beneficiary fell within the definition of managerial capacity or executive capacity outlined in 8 C.F.R. 205.4(j)(2). The petitioner must also submit an organizational chart, which shows the foreign entity's overall structure, and the level of authority that the beneficiary held within the company.

In the instant case, the petitioner did not submit a job description or an organizational chart and has, therefore, not met its burden of proof. The Service shall not be persuaded that a position is managerial or executive simply on the basis of the beneficiary's job title, or payroll records that show the foreign entity paid the beneficiary a particular salary. Without a detailed job description or an organizational chart, the Service cannot conclude that the evidence clearly establishes the beneficiary was primarily a manager or an executive for at least one year immediately prior to his arrival in the U.S. Therefore, the director's denial of the petition on this basis is affirmed.

The next issue in this proceeding concerns the nature of the beneficiary's job duties for the U.S. entity, which the director concluded were neither primarily managerial nor primarily executive. The director based his decision on the petitioner's failure to demonstrate that the petitioner employed any individuals, other than alleged managers, to perform all of the nonqualifying duties for the company. According to the director, the petitioner could not have generated \$363,547 in sales by not employing any salespersons, unless the beneficiary and the two other alleged managers were performing the actual sales for the company. The director also noted the lack of a detailed job description as a determining factor in his finding that the beneficiary was neither primarily an executive nor primarily a manager for the U.S. entity.

On appeal, counsel claims that "a host of outside independent contracts [sic] are employed to perform much of the administrative day to day work." The petitioner has listed its alleged outside contractors; however, upon review of this list, it is clear that the contractors are not performing the company's day-to-day tasks.

For example, the petitioner lists companies such as Staples and Federal Express as outside contractors. Although Staples may deliver office supplies to the petitioner and Federal Express may deliver the petitioner's packages, neither of these companies places the petitioner's office supply order or packages its Federal Express documents. These are tasks that must be accomplished by an individual within the petitioner's organization.

As the petitioner failed to show how each company performs a day-to-day administrative task for the petitioner, or to identify an employee within the petitioner who performs nonqualifying duties,

the Service must conclude that the beneficiary's primary role within the company is neither executive or managerial. This is particularly evident considering that the company imports and exports rice products; yet, does not employ any sales persons, either on the company payroll or on a contractual basis, to generate its hundreds of thousands of dollars in sales each year.

Concerning the director's finding that the lack of a detailed job description was a determining factor, counsel provides a more detailed job description for the beneficiary on appeal. According to counsel, the beneficiary is responsible for "setting shipping policies, deadlines, methods of shipping, and charges to customers for expedited handling." The Service questions the veracity of the job description submitted by counsel, as some of the job duties of the beneficiary appear duplicative with other positions within the organization.

For example, in the initial I-140 petition, the petitioner claimed that the shipping manager is in charge of all issues related to customs and shipping; yet, on appeal, counsel claims that it is the beneficiary who decides how much money to charge a customer for expedited shipping. As the petitioner failed to submit a job description for any employee other than the beneficiary, or to describe the company's organizational structure, the Service is unable to determine whether the beneficiary is primarily a manager or an executive. Therefore, the director's denial of the petition on this basis is also affirmed.

Additionally, while not addressed by the director, the record does not support a finding that a qualifying relationship exists between the petitioner and the foreign entity, Winnipeg Enterprises, located in Pakistan.

According to its articles of incorporation, the petitioner issued 200 NPV shares of stock. As evidence of the foreign entity's ownership of the petitioner, the petitioner submitted one stock certificate, which showed that the foreign entity owned 100 shares of stock. The record lacks information and evidence about ownership of the remaining 100 shares of the petitioner's stock. As the petitioner only established that the foreign entity owns 50% of the company, but did not establish that the foreign entity controls the company, the Service cannot find that a qualifying relationship exists.

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.