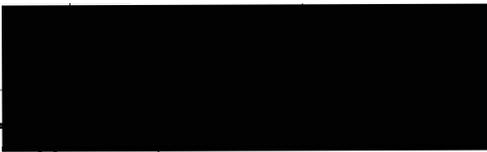




U.S. Department of Justice  
Immigration and Naturalization Service

BH

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



File: EAC 99 146 50149

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:



Identification data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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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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 Vermont corporation that produces Shakespearian and classical theater productions. The petitioner seeks to employ the beneficiary as its producing-artistic director 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 was employed by the foreign entity in a managerial capacity, and that the beneficiary is currently and will continue to be employed in a managerial or executive capacity.

On appeal, counsel submits a brief. The petitioner submits organizational charts of the U.S. and foreign entities and a graph that depicts the number of productions it has produced since 1997.

Counsel requests oral argument pursuant to 8 C.F.R. 103.3(b) in order to explain and clarify the petitioner's methods of operation. As the issues of fact and law in this case have been adequately addressed in writing, the request for oral argument is denied.

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 by the foreign entity in a managerial position for at least one year in the three years immediately preceding his entry into the U.S. in L-1A nonimmigrant status.

The director found that the beneficiary was not a manager for the foreign entity because the beneficiary spent a majority of his time booking performances. The director did not find the booking of performances to be a managerial or executive function.

On appeal, counsel argues that the director misconstrued the definition of "booking" when he denied the petition. According to counsel, in a previously-submitted motion to reopen, the petitioner submitted an affidavit of the beneficiary, who explained in detail the definition of "booking." Both the beneficiary and counsel state that the term "booking" is a term of art, and really pertains

to the managerial function of producing.

Counsel's arguments are persuasive. According to the organizational chart of the foreign entity and the petitioner's detailed job description for the beneficiary, the record supports a finding that the beneficiary was a manager for the foreign entity. First, as the producer and artistic director of the foreign entity, the beneficiary managed the theater company, which included, selecting the types of performances that the company would produce during the season. Second, the organizational chart showed that the beneficiary supervised other managers, and evidence in the record showed that he maintained authority over all personnel decisions. Finally, the beneficiary exercised direction over the day-to-day operations of the company, as he held a senior-level managerial role over the theater's productions.

As the beneficiary's job duties fit the definition of managerial capacity, the director's objections have been overcome on this issue.

The next and final issue to be examined is the nature of the beneficiary's job with the U.S. entity. In denying the petition, the director found that because the beneficiary was the sole employee on the company's payroll, he would be required to perform all of the day-to-day nonqualifying duties and, therefore, could not occupy a position that consists of primarily executive or managerial duties.

On appeal, counsel argues that the petitioner submitted ample evidence with the initial I-140 petition and in the motion to reopen, which showed that the beneficiary uses outside contractors and personnel from the foreign entity to execute the day-to-day mundane tasks of the organization. Therefore, even though the beneficiary is the sole employee, counsel contends that the beneficiary has adequate staff to assist him.

Evidence in the record adequately overcomes the director's finding that the beneficiary could not work in a primarily executive or managerial position as the sole employee of the petitioner. In a previously-submitted affidavit, the beneficiary described the types of services other individuals perform in behalf of the petitioner, and how these services comprise the company's day-to-day tasks. The petitioner also provided documentary evidence to support its claim.

Both counsel and the petitioner have persuasively detailed how the beneficiary directs the management of the organization, establishes the goals and policies of the petitioner and exercises wide latitude in discretionary decision-making. As the producing-artistic director, the beneficiary decides the types of productions for each season, where the productions will take place, and how the productions will be staffed. The beneficiary undertakes these

executive duties with little supervision from the board of directors.

The record reflects that the beneficiary performs the duties of an executive outlined in 8 C.F.R. 204.5(j)(2) in behalf of the U.S. entity. Therefore, the director's objections on this issue have also 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.