



U.S. Department of Justice

Immigration and Naturalization Service

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**PUBLIC COPY**

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



File: [Redacted] Office: VERMONT SERVICE CENTER Date: **JAN 30 2001**

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:



*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.

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 claims to manufacture electronics technology. The petitioner seeks to employ the beneficiary as engineering account manager (process applications engineer) 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 capacity.

On appeal, counsel submits a brief. The petitioner submits a letter in behalf of the beneficiary.

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 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 her entry into the U.S. in L-1A nonimmigrant status.

The director presented the following reason for denying the petition on this basis:

It appears that she [beneficiary] was a team leader in a department made up of at least six other teams and numerous engineers. This Service has already established that it is the duties of the position and not the job title which are dispositive in determining if a position is that of a multinational manager.

On appeal, counsel claims that she never suggested that the beneficiary was a manager by virtue of her title. According to counsel, the beneficiary managed an essential function of the foreign entity, which was the process engineering subdivision; controlled the work of 10 professional employees; maintained authority over personnel decisions; and exercised discretion over the day-to-day operations of her unit.

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 counsel's depiction of the beneficiary's duties. As these 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 the beneficiary spent a minimal amount of time on managerial duties, did not supervise managerial or professional employees, and spent the majority of her time performing the actual duties of a process engineer. These findings

led the director to conclude that the beneficiary was not managing the engineering division of the petitioner.

On appeal, the petitioner claims that the company has reorganized since the filing of petition, and the beneficiary's managerial responsibilities have increased and expanded since the filing of the initial petition. Counsel further specifies that the beneficiary maintains a senior level of discretionary decision-making authority within her area of responsibility and maintains business contracts worth in excess of \$75 million.

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 evidence that the petitioner submits on appeal regarding the beneficiary's increased job responsibilities cannot be considered on appeal, as the change in duties occurred after the filing of the initial I-140 petition. Nevertheless, the job duties of the beneficiary as described by the petitioner in the initial I-140 petition are duties that fall within the definition of managerial capacity outlined in 8 C.F.R. 208.4(j)(2). Therefore, even without the increase and expansion of the beneficiary's job duties, she qualifies as a multinational manager.

First, the petitioner adequately described how the beneficiary manages the Design for Manufacturability (DFM) process, which is an essential function of the petitioner.

Second, the petitioner specifically described the types of positions the beneficiary supervises, which include both managerial and professional employees, including engineers and designers.

Third, the petitioner provided information concerning the beneficiary's authority over personnel decisions within her department, and sufficiently explained the beneficiary's role within the company's organizational hierarchy and within the essential function she manages.

Finally, the petitioner addressed the beneficiary's authority to exercise discretion over the company's day-to-day operations. According to the petitioner, the beneficiary creates policies and procedures for subordinate employees, assigns tasks for multiple groups, and liaises with clients on long-term technical planning.

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 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.