

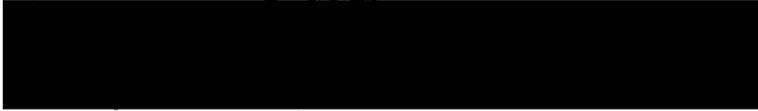


U.S. Department of Justice
Immigration and Naturalization Service

BJ

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OFFICE OF ADMINISTRATIVE APPEALS
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ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC 98 093 51087

Office: CALIFORNIA SERVICE CENTER

Date:

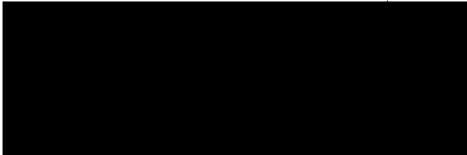
JAN 30 2001

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

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

The petitioner is a California corporation that claims to run a tennis academy. It seeks to employ the beneficiary as its chief executive officer and, therefore, endeavors to classify him 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 California Service Center denied the petition because the petitioner failed to establish that a qualifying relationship exists between the U.S. and foreign entities, or that the beneficiary is currently and will continue to be employed in a managerial or executive capacity for the U.S. entity.

On appeal, counsel submits a brief.

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.

The first issue to be examined is the director's finding that a qualifying relationship did not exist between the petitioner and the alleged foreign entity, Logicia, located in France. In the instant I-140 petition, the petitioner claimed that it is a subsidiary of the foreign entity, as Logicia owns 100% of the issued shares of stock.

8 C.F.R. 204.5(j)(2) states in pertinent part:

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or

indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The director denied the petition on this issue because the petitioner failed to show that the foreign entity exercised control over the U.S. entity, or had paid for its ownership of the petitioner's shares.

On July 23, 1998, the director specifically requested evidence of control over the U.S. entity, such as correspondence and personnel transfers. The director also specifically requested evidence, such as wire money transfers or canceled checks, to show that monies were transferred from the foreign entity to the U.S. entity in exchange for the shares of stock.

In response, the petitioner did not submit any of the requested evidence. Counsel for the petitioner made the following statements about control over the U.S. entity and the purchase of stock, which he reiterates on appeal:

CONTROL

As indicated in the documentation, the foreign parent company owns 100% of U.S. company shares, and this holds all the voting power for the U.S. company.

PURCHASE OF STOCK

██████████ Inc. was incorporated as a close corporation, with [the] number of shareholders limited to eleven. In fact, 100% of the issued shares are owned by Logicia, the foreign parent. The shares are not publicly traded, nor are they advertised or offered for sale. The Corporation Code indicates that the absence of a reference to par value in the articles, such as is the case here, is equivalent to a statement that the shares are to be without par value.

Counsel's arguments are persuasive, in part, and unpersuasive, in part.

Counsel is correct in arguing that the petitioner is not required to present evidence that the foreign entity has managerial control over the petitioner; however, counsel's claim that the foreign entity is not required to show that it paid monies or invested capital in the petitioner is not persuasive.

According to Schedule L of the petitioner's 1996 corporate return, the petitioner received \$7,000 for its common stock

22b). Such a disclosure on the corporate tax return clearly establishes that the petitioner received monies for the purchase of its stocks. The regulation at 8 C.F.R. 204.5(j)(3)(ii) specifically allows the director to request additional evidence in appropriate cases, as the Service may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired, particularly if evidence the petitioner submits as part of the petition, such as copies of its corporate tax return, shows that it received monies for the stocks.

As the petitioner failed to present evidence to show that it purchased the petitioner's stock, the Service must conclude that a qualifying relationship does not exist between the petitioner and the foreign entity. Therefore, the director's decision on this issue is affirmed.

The next issue to be examined is the nature of the beneficiary's duties for the U.S. entity, which the director found to be neither managerial nor 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.

In denying the petition, the director found that the beneficiary did not function in a primarily managerial or executive capacity because his job appeared to be that of a tennis coach. On appeal, counsel argues that the beneficiary performs day-to-day oversight of the tennis coaches and students; hires and fires tennis coaches; makes policy decisions; and sets goals. Neither counsel nor the petitioner, however, presents any evidence to support counsel's assertions.

In its initial I-140 petition, the petitioner described the beneficiary's position as chief executive officer as follows:

He has hired coaches and support staff, obtained the necessary licenses, hired accountants and other business professionals, and has made all necessary decisions to get the business up and running.

The beneficiary's duties do not fall within the definition of executive capacity. The petitioner's description of the beneficiary's position is vague, and does not contain any information on how the beneficiary directs the management of the organization or establishes goals and policies. Additionally, the petitioner did not outline how the beneficiary exercises wide latitude in discretionary decision-making, or explained whether the beneficiary receives only general supervisor from superiors.

The beneficiary's duties also do not fall within the definition of managerial capacity.

The petitioner did not specify how the beneficiary manages the organization or an essential function of the organization, and it is clear from the payroll records that the beneficiary does not supervise any supervisory, managerial or professional employees, as the contractual employees are tennis coaches. Finally, the petitioner did not explain whether the beneficiary exercises direction over the day-to-day operations of the petitioner.

Although counsel, on appeal, lists specific duties that the beneficiary executes, the assertions of counsel do not constitute evidence. Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Without a detailed job description, which outlines the beneficiary's daily activities, the Service cannot conclude that

the beneficiary's role with the tennis academy is primarily executive or managerial. Therefore, the director's denial of the petition on this issue is also affirmed.

Additionally, while not addressed by the director, the record does not support a finding that the beneficiary was employed in an executive or managerial capacity for at least one year in the three years immediately preceding the beneficiary's entry into the U.S. in L-1A status.

The record contains conflicting information about the type of job the beneficiary held prior to his entry into the U.S. in L-1A nonimmigrant status. The petitioner's alleged parent company, Logicia, claims that the beneficiary was employed as the manager of commercial international development from January 1, 1995 until 1997. The record, however, contains a brochure of the Lansdorp-Ducasse Tennis Program, which states that "the last 8 years he [beneficiary] was Manager of the Vilas-Tiriatic Country Club in Paris." The discrepant information concerning the beneficiary's employment prior to his entry into the U.S. does not enable the Service to find that he was working in an executive or managerial position for a qualifying overseas entity.

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.