



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



PUBLIC COPY

File: WAC 98 164 51253

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 engage in the marketing and trading of computer software. It seeks to employ the beneficiary as its president 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 California Service Center denied the petition because the petitioner failed to establish that the beneficiary is currently and will continue to be employed in an executive or managerial capacity for the U.S. entity. On appeal, 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.

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 issue in this proceeding concerns the nature of the beneficiary's job duties for the U.S. entity. The director based her decision on the petitioner's failure to demonstrate that the beneficiary supervised a subordinate staff who could perform the day-to-day tasks of the petitioner's operations. With only five employees, all of whom hold managerial titles, the director reasoned that the petitioner had not reached a stage of organizational development that could support a primarily executive or managerial position.

On appeal, the petitioner argues that the beneficiary is the highest ranking officer within the petitioner and, as such, directs the management of the organization and establishes all of the company's policies. The petitioner further claims that the beneficiary does supervise managerial employees, who are the vice president, treasurer/purchasing manager, marketing manager, and website manager, and that these employees carry-out the company's daily operational tasks.

The petitioner's arguments are not persuasive. The petitioner's organizational structure and the job description that the petitioner submitted for the beneficiary do not lead to a finding that the beneficiary functions in a primarily executive or managerial capacity.

First, the petitioner consists of the beneficiary and four managers. Although the petitioner did not submit copies of its federal corporate income tax returns, its compiled financial statements indicate that the company sold more than \$163,000 in goods during the 1997 calendar year. The petitioner, however, did not present any evidence that it employed or currently employs any salespersons, either on the company payroll or on a contractual basis. Absent evidence to the contrary, the Service concludes that the beneficiary, as well as the other four alleged managers, are engaged in the provision of goods on behalf of the company, which comprise the essential day-to-day tasks of the petitioner's operations. An individual who performs the essential functions of a company, such as sales, does not work in a primarily executive or managerial capacity. Therefore, the beneficiary cannot be classified as a manager or executive for this immigrant visa petition.

Second, the petitioner submitted a job description for the beneficiary that did not provide any insight into the beneficiary's daily activities. The petitioner claimed that the beneficiary "manages the overall business, financial and administrative operations" of the U.S. entity; yet, failed to detail the types of duties the beneficiary executes in order to direct or manage the petitioner's operations. Without a detailed accounting of the beneficiary's daily activities, the Service cannot conclude that he is eligible for visa classification as a multinational executive or manager.

The evidence in the record does not enable the Service to conclude that the beneficiary's primary role within the company fits the definition of executive capacity or managerial capacity noted in 8 C.F.R. 204.5(j)(2). Therefore, the director's denial is affirmed.

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.