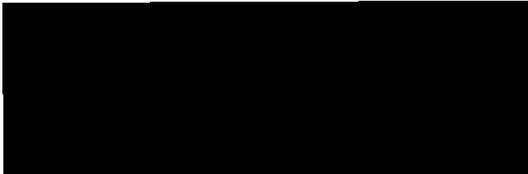




U.S. Department of Justice
Immigration and Naturalization Service

B4

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



PUBLIC COPY

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:

SELF-REPRESENTED

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

Identification data deleted to
prevent clearly unwarranted
release of personal privacy

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 Jersey corporation that claims to be an international air and ocean freight commercial transportation company. It seeks to employ the beneficiary as its vice president/general manager 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 will be employed in an executive or managerial capacity for the U.S. entity. According to the record, the beneficiary is not currently employed by the petitioner, but by the alleged foreign entity in the Republic of China (Taiwan).

On appeal, the petitioner submits a brief and copies of contracts between the petitioner and alleged outside contractors.

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 proposed job duties. Each of the director's reasons for denying the petition and the petitioner's response on appeal will be separately addressed.

The first reason that the director provided for denying the petition was the vague job description for the petitioner's employees. According to the director, the job descriptions gave no sense of the employees' day-to-day activities, and they were merely paraphrases of the definition of managerial capacity. On appeal, the petitioner maintains that the job descriptions were not vague, generalized, or a paraphrase of the definition of managerial capacity.

While a review of the job descriptions for the beneficiary's alleged subordinate employees do not appear to paraphrase the definition of managerial capacity, the job descriptions, nevertheless, do not sufficiently establish that the beneficiary is primarily a manager or executive.

First, the petitioner provided a list of employees, with their accompanying titles and job descriptions. The petitioner, however, failed to provide any documentary evidence, such as copies of its quarterly income tax returns, payroll records, or W-2 wage and tax statements, to support its claim that it employs the number of employees it claims ON a full-time basis.

Second, the petitioner failed to provide an organizational chart to outline the hierarchy of the positions within the company's corporate structure. The titles of the employees, alone, does not provide any indication regarding the supervisory hierarchy. For example, the petitioner claims that it employs an import documentation manager and an import director; yet, it is unclear whether one of these individuals supervises the other individual, or whether both of these individuals are supervised by the beneficiary.

Third, although the job descriptions are not entirely vague, some of the descriptions do not conform with the assigned job title. For example, the job description for the sales director states that the individual disseminates information about the petitioner's business. This description does not fit the level of authority typically associated with a directorial position. Furthermore, the job description for the sales manager states that the individual supervises an assistant sales manager; yet, the petitioner does not list an assistant sales manager position as one of its employees.

Overall, the job duties of the company's employees do not appear to realistically depict the company's operations. Without a clear organizational structure, which shows the hierarchy of the positions, the Service is unable to determine whether the beneficiary manages a subordinate staff of managers, supervisors or professionals, or manages an essential function.

The second and final reason that the director provided for denying the petition was that the organizational structure appeared "top heavy" with individuals employed in alleged managerial capacities. The director found it incredible that one salesperson could generate sufficient revenue to support nine primarily managerial positions. The director, therefore, concluded that the beneficiary performed many, if not all, of the nonqualifying duties, rather than managing the operations.

On appeal, the petitioner claims that the Service never requested information about whether it hired independent contractors to perform nonqualifying work. According to the petitioning entity, the petitioner contracts with several outside companies to provide non-managerial services for the petitioner. The petitioner provides a list of the companies on appeal.

The petitioner's evidence on appeal is not persuasive. Although the petitioner provides a list of alleged contractors, the

petitioner failed to identify the types of services each company provides, and to explain how these services are the day-to-day tasks of the organization. Without this type of information, the Service can only conclude that the beneficiary performs nonqualifying duties that prevent him from performing executive or managerial duties on a primary basis.

Based on the above reasons, the Service does not find that the beneficiary qualifies for an immigrant visa as a multinational executive or manager, and affirms the decision of the director.

Additionally, while not addressed by the director, the record contains conflicting information about the petitioner's ownership, which calls into question whether a qualifying relationship exists between the U.S. and foreign entities.

In a November 2, 1998 response to the director's request for additional information concerning evidence of the petitioner's ownership, the petitioner stated the following about its issuance of stock certificates:

We are enclosing herewith and making a part of this response documentation a copy of the stock certificate of Welgrow International, Inc. , issuing 1000 shares of this corporation's stock to our parent company in Taiwan...**These are the only shares of this company's stock that have ever been issued.**
[emphasis added]

The record, however, contains a stock certificate that contradicts the petitioner's claim. According to this stock certificate, Jeffrey Phu bought 1,000 shares of the petitioner's stock on June 21, 1993. The copy of this certificate does not indicate that these shares were transferred to the petitioner's alleged parent company, and a copy of the petitioner's stock ledger was not included in the record. The copy of the certificate issued to Jeffrey Phu contradicts the petitioner's claim that the certificate issued to the petitioner's parent company is the only stock certificate that has ever been issued. Therefore, the Service cannot find that a qualifying relationship exists between the petitioner and the foreign 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.