

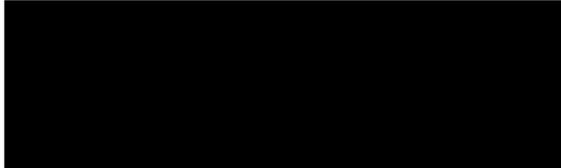


U.S. Department of Justice

Immigration and Naturalization Service

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

BH



**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

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 immigrant visa petition was approved by the Director, Vermont Service Center. Upon further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke the approval of the preference visa petition, and his reasons therefore, and ultimately revoked the approval of the petition on August 10, 1998. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a New York corporation that claims to engage in international trade. 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 Vermont 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, job descriptions of its employees, and copies of employment contracts between the petitioner and two sales representatives.

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 director revoked the approval of the petition on four issues, each of which will be separately addressed below.

The first issue raised by the director in his revocation letter was

the petitioner's failure to submit evidence that it employed two alleged sales representatives on a contractual basis. This was an important issue because without evidence that salespersons were employed to generate its million dollar sales, it was concluded that the beneficiary and the other alleged five managers were performing the sales functions.

On appeal, the petitioner presents copies of two employment contracts that it signed with two sales representatives. One contract is dated March 9, 1998 and the other contract is dated March 17, 1998. The initial I-140 petition was filed on February 2, 1998.

The Service cannot consider this evidence on appeal because the contracts were entered into after the petition was filed. 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).

As the petitioner failed to present persuasive evidence that, at the time it filed the petition, its organizational structure included individuals to perform sales, the director's conclusion that the beneficiary was acting as a salesperson was reasonable. An individual who performs the essential services of a company such as sales, does not work primarily as a manager or executive.

The second issue raised by the director concerned the petitioner's failure to provide a breakdown of the job duties for the employees allegedly subordinate to the beneficiary. This was also an important issue because it related to the level of authority of the beneficiary within the organization.

On appeal, the petitioner submits this information. It does not, however, support the petitioner's claim that the level of the beneficiary's authority is that of an executive or manager over a subordinate staff of managers.

The petitioner attributed the same generalized job duties to each alleged managerial employee, such as "prepare reports" and "visit customers." Although the petitioner may have assigned managerial titles to the employees in its organization, the job duties that the alleged managers execute are the day-to-day tasks of the business. For example, a manager who visits customers is actually making sales calls, which is a responsibility of a salesperson. As a salesperson is neither a managerial, supervisory, or professional occupation, the petitioner has established that the beneficiary is merely a first-line supervisor to nonprofessional employees, rather than a high level manager of other managers.

The third issue raised by the director concerned the breakdown of the beneficiary's weekly duties, which were found to be

unrealistic, as the petitioner stated that the beneficiary would devote six hours each week to "lecturing and coaching." This was an essential issue because it related to the primary focus of the beneficiary's job.

On appeal, the petitioner did not provide any argument in rebuttal to the director's finding, other than to state that it is aware that the beneficiary would not be performing the same task at the same time each week. The petitioner's failure to present any persuasive evidence on appeal merely affirms the director's finding that the beneficiary's primary focus is not on executive or managerial duties.

The fourth and final issue raised by the director related to the petitioner's failure to demonstrate who within its organization performs the company's day-to-day tasks. The petitioner's failure to provide this information led the director to conclude that the beneficiary performs some, if not all, of the day-to-day tasks.

On appeal, the petitioner states that it did not hire a person to perform the nonqualifying duties. This admission also affirms the director's finding that the beneficiary performs nonqualifying duties and, therefore, cannot primarily engage in executive or managerial duties.

Based upon evidence in the record, the director had good and sufficient cause to revoke the approval of the I-140 petition. The petitioner failed to adequately demonstrate that its organizational structure could support an individual working in an executive capacity or managerial capacity as defined in 8 C.F.R. 204.5(j)(2).

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.