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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



File: EAC 00 014 52857

Office: VERMONT SERVICE CENTER

Date: 4 - APR 2002

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:



Public Copy

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


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center denied the immigrant visa petition and 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 is engaged in the import and export business. 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 denied the petition because the evidence in the record did not support a finding that the petitioner currently employs and would continue to employ the beneficiary in a primarily managerial or executive capacity.

On appeal, the petitioner submits a statement and copies of documents already included in the record of proceeding.

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 denied the petition because the petitioner's organizational structure was not sufficiently developed to support a primarily executive or managerial position. The director noted that in addition to the beneficiary, the petitioner employed two individuals in non-managerial, non-supervisory and non-professional positions, and concluded that the beneficiary would primarily perform essential day-to-day tasks.

On appeal, counsel states that "we believe that this case falls within the holding of Irish Dairy Board . . ." but does not elaborate any further on this statement. The petitioner submits a

letter in which it states that the beneficiary manages the overseas entity in addition to managing the petitioner. According to the petitioner, the beneficiary supervises six managers in the overseas entity, three outside contractor companies and two employees in the petitioner, which makes the beneficiary's positions both executive and managerial in nature. As the record is presently constituted, however, the Service does not concur with the petitioner's assertion that the beneficiary currently works and will continue to work in a primarily executive or managerial role.

I. EXECUTIVE CAPACITY

In order to be found eligible for this immigrant visa classification as an executive, the record must clearly show that the beneficiary 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.

See. 8 C.F.R. 204.5(j)(2).

The petitioner fails to establish that the beneficiary works in an executive capacity because it fails to establish that the beneficiary primarily directs the management of the organization or a major component or function of the organization.

First, the petitioner's assertion that the beneficiary's executive role is evidenced by his supervision of six individuals in the overseas entity is not germane to the beneficiary's employment with the petitioner. The Service looks at the organizational structure of the petitioner, not the structure of the overseas entity, when determining whether an individual operates primarily as an executive.

Second, while the petitioner has stated that the beneficiary directs the management of its operations, the petitioner has not adequately supported this assertion with sufficient evidence. In response to the director's request for additional information about the beneficiary's job duties, the petitioner stated that the beneficiary is responsible for setting policy, hiring and firing staff, supervising outside contractors, and signing and approving

financial documents and contracts. These job duties may appear to be executive-level functions, however, they are merely restatements of the definition of executive capacity, rather than clear descriptions of the beneficiary's job duties.

On appeal, counsel refers to an unpublished decision, which found that the beneficiary met the requirements of serving in a managerial and executive capacity for the claimed immigrant classification even though he was the sole employee of the petitioning organization. Counsel has furnished no evidence to establish that the facts of the instant petition are in any way analogous to those in this unpublished case. In this petition, the beneficiary is not the sole employee of the company. Additionally, although the petitioner claims that it contracts certain services to outside companies, the petitioner has not established how these contracted services are relevant to finding that the beneficiary works in a primarily executive capacity.

Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, while 8 C.F.R. 103.3(c) provides that Service precedent decisions are binding on all Service employees in the administration of the Act, unpublished decisions are not similarly binding. Accordingly, the petitioner has not established that the beneficiary is working primarily in an executive capacity as that term is defined in the regulation.

II. MANAGERIAL CAPACITY

In order to be found eligible for this immigrant visa classification as a manager, the record must clearly show that the beneficiary 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.

See. 8 C.F.R. 204.5(j) (2).

The petitioner also fails to show that the beneficiary functions primarily as a manager.

First, the petitioner does not explain, with any degree of detail, how the beneficiary manages the petitioner or a function of the petitioner. As previously stated, the petitioner simply states that the beneficiary manages the petitioner without submitting any documentation in support of its assertion. The beneficiary's title, while indicative of a managerial or executive position, is not the only piece of evidence that the Service examines. Without the submission of detailed job duties, a finding of whether an individual works primarily as an executive or manager cannot be made. IKEA US, Inc., v. U.S. Dept. of Justice I.N.S., 48 F. Supp. 2d 22 (D.D.C. 1999), the court upheld the Service's denial of a nonimmigrant L-1A petition because the petitioner failed to document the percentage of time the beneficiary devoted to managerial or executive duties versus his non-executive and non-managerial duties.

Second, the petitioner's organizational structure shows that it employs two individuals in addition to the beneficiary. One individual is a general manager, who locates goods for export to the overseas entity. The other individual is an assistant manager who helps the general manager by completing purchase orders, making payment arrangements, and executing shipping documents. Although the petitioner gives each employee a managerial title, neither position appears managerial in nature. The act of locating products for export to the overseas entity is the job of a salesperson, not a manager. Similarly, completing purchasing orders and arranging for the shipment of products are clerical duties. Therefore, in addition to failing to establish that the beneficiary supervises managerial, supervisory or professional employees, the petitioner also fails to address that the beneficiary manages an essential function of the petitioner. Therefore, the petitioner has not shown that the beneficiary functions primarily as a manager.

The record lacks persuasive evidence of the beneficiary's eligibility for immigrant visa classification as a multinational executive or manager. Accordingly, the director's decision will not be disturbed.

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 met that burden.

ORDER: The appeal is dismissed.