

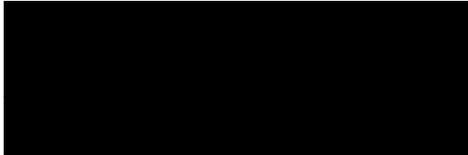


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC 95 075 51521 Office: CALIFORNIA SERVICE CENTER Date: 9 APR 2004

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:
[Redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rose
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center initially approved the immigrant visa petition. Based upon a consular investigation, the director determined that the beneficiary was not eligible for the benefit sought, and she revoked approval of the petition on September 17, 1999 after notice. The director then reopened the proceeding on Service motion and reaffirmed her prior decision. The matter is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the case will be remanded for further action.

The petitioner is a California corporation that imports and wholesales office supplies. It seeks to employ the beneficiary as its vice 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 revoked her approval of the petition because the evidence in the record did not support a finding that the beneficiary was employed by the foreign entity in a managerial or executive capacity for at least one year in the three years immediately preceding the beneficiary's entry into the United States as a nonimmigrant.

On appeal, counsel submits a brief and additional evidence. Counsel had indicated that additional evidence would be submitted in support of the appeal on or before May 20, 2000. As of this date, however, no additional evidence has been received into the record. Therefore, the record is considered complete.

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 issued to the petitioner a Notice of Intent to Revoke her approval of the petition based upon information that she received from a consular office investigation in Taipei, Taiwan. According to the investigation, an employee of the foreign entity [REDACTED] informed a consular officer that the beneficiary only performed routine work for the foreign entity and supervised three employees. [REDACTED] also asserted that the beneficiary did not have signing authority for "big orders" or hiring/firing authority. The director further noted that the beneficiary spent most of his time in the United States, "placing in doubt his compliance with the one year experience (managerial/executive) with the parent company."

In response to the director's Notice of Intent to Revoke, the petitioner submitted a statement from the foreign entity's president, who stated that the beneficiary was employed in a qualifying capacity. However, the director found the statement, by itself, insufficient to overturn the finding of the consular officer. Additionally, the petitioner submitted copies of the beneficiary's correspondence with several clients; however, because the correspondence was signed by a person named Hugo Huang and not by the beneficiary's name of [REDACTED] the director was not convinced that [REDACTED] and [REDACTED] are the same person. These facts led the director to conclude that the beneficiary was not employed by the foreign entity in a managerial or executive capacity for at least one year in the three years immediately preceding the beneficiary's entry into the United States as a nonimmigrant.

On appeal, counsel contends that the statements of [REDACTED] should not be used to revoke an approval of the petition. Counsel states that [REDACTED] was hired after the beneficiary's transfer to the United States and, therefore, she could not have known the beneficiary's exact job duties with the foreign entity. Counsel also asserts that a copy of the beneficiary's passport, which is included on appeal, indicates that the beneficiary, whose name is Shih-Che Huang, is also known as Hugo Huang. Counsel further adds that additional information will be submitted; however, as previously stated, no additional evidence has been received into the record.

The director's decision to revoke her approval of the petition was based upon the statements of [REDACTED] and upon evidence that the beneficiary made frequent trips to the United States. According to a statement from the foreign entity's president, Ms. Lin was not employed at the time the beneficiary was also employed by the foreign entity. Thus, the president asserts that Ms. Lin's statements should not be relied upon in a determination of whether the beneficiary worked in a qualifying capacity for the requisite period of time. Additionally, the foreign entity's president asserts that the beneficiary's trips to the United States were of short duration except for the period of time when

he was in the United States to start the petitioner's business operations. According to the president, even though the beneficiary was away from the foreign entity on business trips, he was still employed by the foreign entity in the same executive/managerial capacity.

The president's argument is persuasive. If [REDACTED] was not employed by the foreign entity at the time that the beneficiary was also employed, then her knowledge of the beneficiary's job responsibilities may not be reliable. There is no evidence in the record to show whether the beneficiary was questioned about Ms. Lin's statements or whether he provided any evidence that would have indicated that he was not employed in a managerial or executive capacity with the foreign entity. Additionally, the beneficiary's business trips away from Taiwan, which included prolonged periods of stay in the United States, did not break his employment with the foreign entity. Accordingly, the petitioner has successfully rebutted the director's stipulated reasons for revoking her approval of the petition.

The director's realization that she made an error in judgment in initially approving a visa petition may, in and of itself, be good and sufficient cause for revoking the approval, provided the director's revised opinion is supported by the record. Matter of Ho, 19 I&N Dec. 582 (BIA 1988). In the instant case, the issues raised in the consular officer's report are sufficient to warrant a reexamination of the record. As the record is presently constituted, there is insufficient evidence to show that (1) the foreign entity employed the beneficiary in an executive or managerial capacity, (2) the proffered position involves primarily executive or managerial duties, and (3) a qualifying relationship exists between the U.S. and foreign entities. Because these issues have a direct bearing on whether the beneficiary is qualified for this immigrant visa classification, the case will be remanded to the director for further action.

The director should request a detailed job description for the beneficiary's job with the foreign entity, an organizational chart of the foreign entity, and the job descriptions of all employees in the foreign entity at the time the petition was filed. Without this type of documentation, there is insufficient evidence to find that the beneficiary was employed in an executive or managerial capacity for at least one year in the three years immediately preceding the filing of the petition.

The record also does not contain sufficient evidence of the beneficiary's executive or managerial role with the United States entity. The petitioner has only described the beneficiary's proposed job duties in general terms. The petitioner stated that the beneficiary would be "in charge of the business and financial affairs of the U.S. affiliate, including purchasing, sales, marketing, accounting, personnel, administration, strategic

planning, and policymaking." Such a generalized job description does not provide the insight needed in order to determine whether the beneficiary would primarily execute executive or managerial tasks. The petitioner should, therefore, submit a detailed job description for the beneficiary's proposed role with the United States entity, an organizational chart of the petitioner, and the job descriptions of all of the petitioner's employees. This type of documentation would enable the Service to determine whether the beneficiary functions in a primarily executive or managerial role.

Finally, the record does not contain any evidence of the foreign entity's ownership. Therefore, there is not enough information to find that the petitioner and the foreign entity are affiliates, as claimed by the petitioner.

Accordingly, the record will be remanded to the director to further examine the issues that were addressed in this decision. The director may request any additional information that she believes is necessary in order to make a determination. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn and the record is remanded to her for entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.