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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.
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Washington, D.C. 20536



File: WAC 98 223 50042 Office: CALIFORNIA SERVICE CENTER Date: 11 APR 2002

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:



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

Myra L. Roser
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California 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 California corporation that claims to be engaged in international trade. It seeks to employ the beneficiary as its managing director 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, counsel submits a brief. Counsel states, in part, that the director misinterpreted the evidence when determining that the beneficiary worked as a sales agent. Counsel claims that the beneficiary functions in a primarily executive or managerial capacity.

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 found that the beneficiary was not qualified for this immigrant visa classification because no support staff or professional employees were working under the beneficiary's supervision. The director concluded that the beneficiary is, at best, a sales person/agent with only some supervisory responsibilities.

On appeal, counsel states that the beneficiary manages the

petitioner, as he has been vested with the authority to direct funding and decide on the appropriate allocation of monies, and because he works on an equal level with the petitioner's president to supervise the management of the petitioner's daily operations. Counsel further adds that the beneficiary also makes important decisions about the company's policies and strategic development.

Regarding the supervision of employees, counsel states that there is a clear organizational hierarchy with respect to the positions within the company. Counsel states that the beneficiary supervises a sales manager, a sales representative, a secretary and a warehouse employee. Counsel stresses that these employees are subordinate to the beneficiary and relieve him from performing routine administrative and non-executive or non-managerial duties.

Finally, counsel states that the beneficiary has the authority over all personnel decisions and exercises discretion over the petitioner's operations.

Pursuant to 8 C.F.R. 204.5(j)(2):

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 definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. Champion World, Inc. v. I.N.S., 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir.(Wash.)).

The petitioner fails to establish that the beneficiary works in an executive or managerial capacity. The petitioner does not provide any detail about the actual job duties that the beneficiary executes.

In describing the beneficiary's position with its company, the petitioner stated that:

[H]e is fully responsible for all the activities of the marketing services and sales department of [the petitioner] including collecting strategic marketing information and promoting sales in the overseas markets. He develops guidelines and procedures, supervises the implementation and evaluates the results of all promotion plans and projects. . . . [The beneficiary] will be continually responsible for conducting general administration affairs of the company, managing and directing the overall U.S. sales and marketing operations of the products. He will be responsible for all of [the petitioner's] business activities in the United States including marketing sales administration, finance and technical services; maintaining business contacts and relations with the U.S. in the relevant business areas; and conducting all personnel evaluations including hiring personnel as necessary, firing and promotions. . . .

This description of the beneficiary's job duties, while lengthy, is comprised entirely of broad statements and reiterations of the criteria set forth in the definition of executive and managerial capacity. "Specifics are clearly an important indication of whether an applicant's duties are primarily executive or

managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations." Fedin Bros. Co., Ltd. v. Sava, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), aff'd, 905 F. 2d 41 (2d. Cir. 1990).¹

Here, the petitioner states that the beneficiary is responsible for all of the petitioner's business activities, which include sales and marketing, finance and technical services. However, the petitioner does not describe the actual duties that the beneficiary must undertake as the person who is allegedly responsible for every facet of the petitioner's operations. This type of specific information is crucial in a determination of whether the proffered position is in an executive or managerial capacity.

The Service notes that an individual who works in an executive or managerial capacity may perform duties that would not generally be classified as executive or managerial level tasks. However, the petitioner bears the burden of establishing that the beneficiary *primarily* executes executive or managerial duties and any non-executive or non-managerial duties are merely incidental to the position. In this case, the petitioner has not met its burden of showing that the beneficiary directs the management of the organization or an essential function, or manages the organization as a primary job responsibility because the beneficiary's daily activities are unknown. The petitioner has chosen to submit only a vague job description for the beneficiary that does not include any meaningful details about the beneficiary's actual job duties. (Emphasis added.)

Regarding the supervision of employees, the Service does not concur with counsel that the positions subordinate to the beneficiary, which are sales manager, sales representative, secretary, and warehouse employee, are either supervisory, managerial or professional.

In Republic of Transkei v. INS, 923 F.2d 175 (D.C. Cir. 1991), the court upheld the Service's denial of a nonimmigrant L-1A petition because the petitioner failed to document what proportion of the beneficiary's duties would be managerial/executive functions and what proportion of the duties would be non-managerial/non-executive. Additionally, the petitioner failed to specify the

¹ The court in Fedin Bros. Co., Ltd. v. Sava also noted that "[t]he actual duties themselves reveal the true nature of the employment." See id. at 1108.

names or specific duties of persons supervised by the beneficiary.

In this petition, although the petitioner provided the names of the individuals who occupy the positions subordinate to the beneficiary, the petitioner has not described the job duties associated with each position. On appeal, counsel provides a vague description of each employee's duties; however, this information does not establish that any of the positions are supervisory, managerial or professional. For example, counsel states that the sales manager assists the beneficiary and is assisted by the sales representative. This information does not establish that the individual who occupies the position of sales manager works in a managerial capacity, despite the individual's job title. Thus, the petitioner has not shown that the beneficiary supervises managerial, supervisory or professional employees as a primary job responsibility.

The evidence in the record does not persuasively establish that the proffered position meets either definition of executive or managerial capacity. Therefore, the director's decision will not be reversed.

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.