

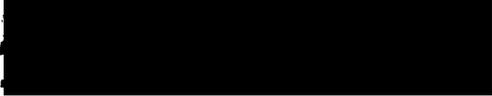


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U.S. Department of Justice  
Immigration and Naturalization Service

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



12 APR 2002

File: EAC 00 183 51039 Office: VERMONT SERVICE CENTER Date:

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 Policy

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

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 Wisconsin corporation that is engaged in the import and export business. It seeks to employ the beneficiary as its administrative and sales 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 denied the petition because the evidence did not establish that the petitioner currently employs and would continue to employ the beneficiary in a primarily executive or managerial capacity.

On appeal, the petitioner submits evidence 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 on the basis that the petitioner did not have "sufficient managerial capacity work to be performed to require the services of even one full-time manager." The director also noted that the petitioner did not submit the names of its employees and the amount of wages paid to them.

On appeal, the petitioner states that it has four employees all of whom are supervised by the beneficiary. The petitioner also submits copies of documents already included in the record which consist of an organizational chart of the foreign entity, an organizational chart of the petitioner, a copy of its corporate

income tax return for the 2000 calendar year, and its quarterly federal tax returns for the 2000 calendar year.

The petitioner does not present persuasive arguments to overturn the director's decision. As the record is presently constituted, the evidence does not support a conclusion that the beneficiary is currently employed and will continue to be employed in a primarily executive or managerial capacity.

The merits of this case are being judged according to the organizational structure of the petitioner at the time the petition was filed on May 25, 2000. For immigrant visa petitions, the Commissioner has held that, to establish a priority date, a petitioner must establish eligibility at the time of filing the immigrant petition; an immigrant 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).

At the time it filed the petition, the petitioner claimed on the I-140 petition that it had twenty-five employees; however, the petitioner did not submit the position titles, names or job descriptions of these alleged 25 employees. Therefore, the director requested that the petitioner submit additional information.

In an October 30, 2000 response, the petitioner submitted an organizational chart, which indicated that it had six employees. The petitioner stated that the beneficiary, as the administrative and financial manager, supervised an export/import assistant, a warehouse clerk, and a purchasing assistant. In addition, the petitioner listed the job duties of the three individuals who the beneficiary supervised and described the beneficiary's job duties as:

██████████ [the beneficiary] is in charge of hiring and firing, training, delegation of assignments according to capabilities, preferences and technical goals, discipline, promotion and remuneration. Mr. ██████████ is responsible for managing and directing all development activities as they pertain to our International operations and provides significant contributions in the formulation of strategic product plans to ensure that the business policies are effectively incorporated into our international business activities. ██████████ has autonomous control and exercises wide latitude and decision-making in establishing the most advantageous courses of action for the successful management and direction of our international development activities.

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 a primarily executive role because it has not provided sufficient evidence of the beneficiary's actual job duties, which would provide insight into whether the beneficiary primarily directs the management of the organization or a major component or function of the organization.

Here, the petitioner does not provide any detail about the actual job duties that the beneficiary performs in order to execute the generalized job duties that it ascribes to the beneficiary. For example, the petitioner states that the beneficiary "is responsible for managing and directing all development activities," but does not describe the types of duties that are associated with executing this rather broad job responsibility. "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).<sup>1</sup> In this particular case, the petitioner has not stipulated the beneficiary's actual job duties but, rather, has chosen to present a generalized job description of the beneficiary's overall duties.

While the Service notes that an individual who works in an executive capacity may occasionally perform duties that would not generally be classified as executive-level tasks, the petitioner bears the burden of establishing that the beneficiary *primarily* executes executive duties and any non-executive duties are merely incidental to the position. The petitioner has not shown how the

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<sup>1</sup> 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.

beneficiary can manage and direct the development activities of the petitioner's operations if it does not identify who the beneficiary directs in the execution of the development activities. Certainly, the positions of export/import assistant, warehouse clerk and purchasing assistant would not be responsible for any "development activities." Thus, the Service cannot conclude that the beneficiary is working in an executive capacity as that term is defined in the regulation. (Emphasis added.)

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 proffered position involves primarily managerial functions. While it appears that the beneficiary has the authority to hire and fire personnel, the evidence is not sufficient to establish that the beneficiary manages the organization, controls the work of managerial, supervisory or professional employees, or manages an essential function.

Here again, the petitioner's submission of a broad job description for the beneficiary is not adequate evidence of the beneficiary's employment in a primarily managerial capacity. In [REDACTED] 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 duties versus his non-managerial duties. Like the petitioner in [REDACTED] the petitioner in this case does not provide any indication of the types of managerial-level duties that the beneficiary executes. The petitioner merely reiterates the criteria set forth in the definition of managerial capacity, without providing any specific examples about the beneficiary's own job duties.

The petitioner also fails to establish that the beneficiary controls the work of managerial, supervisory or professional employees, or manages an essential function. The record indicates that the beneficiary supervises an export/import assistant, a warehouse clerk and a purchasing assistant. None of these positions is either managerial, supervisory or professional. Furthermore, the petitioner does not state or explain, with any degree of detail, the function that the beneficiary allegedly manages and how it is essential to its operations. Accordingly, the beneficiary does not merit immigrant visa classification as a multinational manager.

The evidence of record does not support a finding that the beneficiary currently works and would continue to work in a primarily executive or managerial capacity. Beyond the decision of the director, the evidence also does not establish that the beneficiary was employed in a primarily executive or managerial capacity with the foreign entity for at least one year in the three years preceding the beneficiary's entry into the United States in L-1A status. The petitioner has not presented a sufficiently detailed job description for the beneficiary's overseas position in order for the Service to find that the beneficiary's role was either primarily executive or managerial. However, inasmuch as the petition is being denied on other grounds, this issue shall not be examined further.

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.