



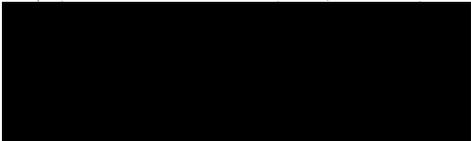
BH

U.S. Department of Justice  
Immigration and Naturalization Service

**PUBLIC COPY**

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

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



File: WAC 00 009 53126 Office: CALIFORNIA SERVICE CENTER

Date: 19 DEC 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:



**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 California Service Center denied the employment-based preference visa 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 is engaged in the import, export and manufacturing of electronic products and telecommunications equipment. It seeks to employ the beneficiary as its vice president and, therefore, endeavors to classify the beneficiary as a multinational executive or manager 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 on the basis that the proffered position is neither executive nor managerial in nature.

On appeal, counsel submits a brief and an organizational chart for the petitioning entity's operations. Counsel states, in part, that the beneficiary has been serving as the petitioner's vice president in L-1A nonimmigrant status since 1994 and as such, is qualified to be classified as a multinational executive or manager.

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.

In the initial petition filing, the petitioner described itself as a manufacturer and seller of electronics and laser pointers that employed four individuals and had a gross annual income in excess of \$2,000,000. According to the petitioner, the beneficiary had been employed as its vice president since 1994 in L-1A nonimmigrant status. The proffered position of vice president was described as follows:

In addition to sales, marketing and public relations,

her other job duties will [be to] continue setting sales objectives, oversee staff, coordinate advertising, purchasing, customer accounts and accounting, [and] prepare sales and financial reports for the president.

In a subsequent letter to the director, the petitioner described the proffered position in more detail:

[The beneficiary] plays a vital role in the management of the corporation, customer relations and the development of new business. Her responsibilities include setting up appointments with customers, marketing and PR. She further has to oversee the design of brochures and advertising material. She is solely responsible for the companies [sic] advertising budget for print and TV media. Furthermore[,] she organizes the print and mailing of catalogues, oversees physical operations and supervises/manages office personnel functions. She maintains databases, tracks project status, accounts [sic] and complies product operations manuals, handles all management responsibilities to improve quality of work, [and] provides monthly, quarterly progress reports.

The petitioner also provided a breakdown of the percentage of time that the beneficiary devoted to certain tasks. According to the petitioner, the beneficiary devotes 5% of her time to human resources, 10% of her time to consulting with the parent company, 20% of her time to accounting duties, 20% of her time managing projects, and 35% of her time on marketing and sales projects. The petitioner did not account for the remaining 10% of the beneficiary's time.

In addition, the petitioner provided an organizational chart for its operations and the names and brief job descriptions of the individuals under the beneficiary's supervision. According to this evidence, the beneficiary supervises 13 sales representatives, one warehouse manager and one shipping clerk. The petitioner described the warehouse manager's job as "inventory, fulfillment" and the shipping clerk's job as "packaging."

The director found that the proffered position was neither executive nor managerial in nature, and she denied the petition. In the denial letter, the director concluded that the beneficiary functions as a first-line supervisor who is in charge of 13 nonprofessional employees in a small international trade and sales business.

On appeal, counsel states the director incorrectly noted that the beneficiary had been employed as the vice president since 1999 instead of 1994, which is the year that the beneficiary began her employment as the petitioner's vice president in L-1A nonimmigrant

status. Counsel also maintains that the beneficiary has greatly contributed to the establishment and growth of the petitioner during that time through her "executive leadership." The petitioner also submits an updated organizational chart for its 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's breakdown of the beneficiary's work schedule shows that the beneficiary does not perform the specified responsibilities that are found in the definitions of executive capacity or managerial capacity. The beneficiary spends approximately 70% of her time performing duties such as tallying balance sheets, conducting market surveys, maintaining a customer database, and arranging domestic and international transportation. None of these duties could be considered a high level responsibility of an executive or a manager. Moreover, if the beneficiary spends 20% of her time devoted to accounting duties and 35% of her time on marketing activities, then the beneficiary's primary role is to perform services for the petitioner. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. Matter of Church Scientology International, 19 I&N Dec. 593 (BIA 1988).

On appeal, the petitioner submits an updated organizational chart as evidence that the beneficiary functions at a high level within the petitioner's organizational structure. It is noted that this organizational chart is markedly different from the initial organizational chart that the petitioner had submitted in support of the petition. In the initial organizational chart, the beneficiary was listed as the secretary, treasurer and vice president. The organizational chart also included the positions of warehouse manager and shipping clerk. In the organizational chart that the petitioner submits on appeal, the positions of warehouse manager and shipping clerk have been changed to "BLC Warehouse" and "PDS Distribution Services" respectively. The individual who was listed as the warehouse manager in the initial organizational chart is listed as the petitioner's general manager in the current organizational chart. Additionally, the beneficiary is only listed as the vice president in the current organizational chart. The positions of treasurer and secretary do not exist.

When determining whether the proffered position is either an executive or managerial position, the Service looks at the petitioner's organizational structure at the time the petition was filed. 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).

If staffing levels are used as a factor in determining whether an

individual is an executive or manager, section 101(a)(44)(C) of the Act requires the Service to consider the reasonable needs of the organization in light of its overall purpose and stage of development. A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. Systronics Corp. v. I.N.S., 153 F.Supp.2d 7 (D.D.C. 2001).

The petitioner's submission of a new organizational chart does not mask the fact that, at the time the petition was filed, the proffered position was neither executive nor managerial in nature. While the petitioner claims the beneficiary's managerial capacity is evidenced by her supervision of employees, a close examination of the evidence reveals that the wages paid to the warehouse manager and the shipping clerk amounted to \$14,713 in the 1999 calendar year. Such low wages are not indicative of individuals who work full-time during the year, and who are available to execute the routine day-to-day tasks of the petitioner's operations. Thus, the petitioner's staffing levels at the time the petition was filed indicate that the reasonable needs of the petitioner in light of its overall stage of development did not require the services of an individual whose only responsibilities would be to execute primarily executive or managerial duties. The beneficiary filled the roles of treasurer, secretary and vice president and provided the accounting and marketing services for the company. No evidence in the record supports a finding that the beneficiary functions primarily as an executive or a manager in her role as vice president of the petitioning entity. Accordingly, the director's decision will not be disturbed. The petition shall be denied.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary was employed in an executive or managerial capacity with the overseas entity for at least one year in the three years immediately preceding the beneficiary's entry into the United States as a nonimmigrant. The record does not contain a comprehensive description of the beneficiary's role with the overseas entity to illustrate her employment in an executive or managerial capacity. Inasmuch as the petition is being denied on another ground, this issue shall not be examined further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.