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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

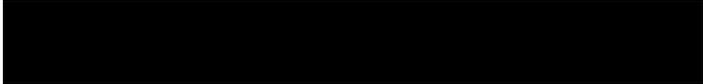


File: EAC 99 185 53377

Office: VERMONT SERVICE CENTER

Date: 8 Feb 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:



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INSTRUCTIONS:

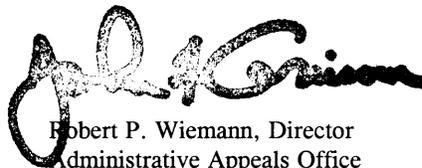
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 New York corporation that is engaged in the wholesale of gold and jewelry. 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, counsel submits a brief and additional evidence.

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 for the following reasons:

The beneficiary's updated position description is written in vague terms that appear to paraphrase the Service's definitions as they relate to executive[s] and managers. The description gives no clear pictures [sic] of the actual duties to be performed by the beneficiary on a day to day basis. In addition, the claimed duties of the "vice president" appear to duplicate many of the duties said to be performed by the beneficiary.

On appeal, counsel contends that the beneficiary's job description was neither vague nor unclear, as alleged by the director. Counsel states that the director's mere statement that the description was vague does not constitute a specific reason for denial.

Counsel also argues that the job descriptions for the beneficiary (president) and the vice president were not similar, which was another allegation of the director. Counsel notes that while the vice president participates in formulating company policies, it is the beneficiary, as president, who plans, develops and establishes the actual policies with the assistance of the vice president. Counsel also notes that while the vice president directs a specific division, the beneficiary directs the petitioner's entire operations.

Counsel outlines how the beneficiary's role with the petitioner is in an executive capacity and, in the alternate, in a managerial capacity. However, as the record is presently constituted, the Service does not concur with counsel's conclusions.

#### **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 a primarily executive role because it fails to establish that the beneficiary directs the management of the organization or a major component or function of the organization.

The Service disagrees with counsel that the beneficiary's job description was clear and provided an adequate depiction of the beneficiary's job duties.

First, counsel cites several examples of the beneficiary's job duties, which include, but are not limited to:

- ❖ Overseeing company's overall activities
- ❖ Planning, developing, and establishing the policies and objectives of the corporation
- ❖ Advising the appropriate means to achieve these goals

A job duty such as "advising the appropriate means to achieve these goals" is entirely vague; there is no indication who the beneficiary is advising, what may constitute the "appropriate means" and what are the company goals. Broad descriptions of a beneficiary's job duties are neither insightful nor meaningful in a determination of whether a beneficiary directs the management of an organization on a primary basis.

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. Similarly, the beneficiary in IKEA US, INC., v. USINS, 48 F. Supp. 2d 22 (D.D.C. 1999) was also denied classification as a multinational manager in part 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.

Based upon the holding in these two cases, it was not unreasonable for the director to find that the broad descriptions of the beneficiary's job duties were vague. On appeal, neither counsel nor the petitioner submits evidence to demonstrate that the beneficiary directs the management of the petitioner as a primary task.

Regarding the delineation of duties between the beneficiary and the vice president, the director's finding that the job descriptions were similar was a reasonable conclusion.

The petitioner states that the vice president is "primarily responsible for the management of the major division of our business organization (Sales/Marketing). . . ." However, the petitioner describes its entire business operations as the sales and marketing of gold and jewelry, which is not simply a division of its operations. Both the beneficiary and the vice president cannot be in charge of the petitioner's operations (managing the sales and marketing of gold and jewelry) without some duplication of efforts. Without a clear listing of each employee's job responsibilities, the director's finding that a distinction could not be drawn between the job of the beneficiary and the job of the vice president was reasonable.

Based upon the above discussion, the evidence does not lead to a

conclusion that the beneficiary is working 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.

As stated in the previous section, the petitioner does not explain, with any degree of detail, how the beneficiary manages the petitioner or a function of the petitioner. The petitioner also does not detail how the beneficiary exercises direction over the petitioner's day-to-day operations. Simply assigning the beneficiary a title that would relate to an executive or managerial role is not sufficient evidence to show that the beneficiary primarily functions in an executive or managerial capacity. The petitioner's lack of details concerning the beneficiary's actual job duties does not enable the Service to find that the beneficiary manages the organization or exercises direction over its daily operations. Accordingly, the Service does not find that the beneficiary operates primarily as a manager.

Beyond the decision of the director, the record does not contain evidence of the existence of a qualifying relationship between the petitioner and the foreign entity. The petitioner does not submit any documentary evidence of the overseas entity's alleged ownership of the U.S. entity, such as stock certificates, a corporate stock ledger, and evidence of a transfer of funds from the overseas entity to the petitioner for the purchase of the petitioner's stock. However, as the appeal will be dismissed on another ground, this issue will 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.