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U.S. Department of Justice
Immigration and Naturalization Service

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



File: [Redacted]

Office: TEXAS SERVICE CENTER

Date: 07 JAN 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:



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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

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

DISCUSSION: The Director of the Texas Service Center denied the immigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the case remanded for entry of a new decision.

The petitioner is a non-profit organization that seeks to employ the beneficiary as a Port Coordinator 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 petitioner did not establish that it had the ability to pay the proffered wage of \$826.92 per week to the beneficiary. On appeal, counsel submits a brief and additional evidence. Counsel states that the additional documentation submitted on appeal shows that the petitioner has the ability to pay the beneficiary's salary.

8 C.F.R. 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

In denying the petition, the director found that the petitioner had not established its ability to pay the beneficiary's salary because the beneficiary did not have a W-2 wage and tax form for the 1999 calendar year. On appeal, counsel maintains that the petitioner has been paying the beneficiary's and other employees' salaries, and this evidence should be sufficient to show that the petitioner has the ability to pay the proffered wage. Counsel also submits copies of the petitioner's bank account statements and an independent auditor's report for the 1998 and 1999 years.

Counsel presents persuasive evidence on appeal, which is sufficient to show that the petitioner has the ability to pay the proffered wage of \$826.92 per week. Nevertheless, the petition may not be approved at this time because the record is deficient regarding whether (1) the beneficiary was employed in a primarily executive or managerial capacity for at least one year in the three years immediately preceding the beneficiary's entry into the United States, and (2) the beneficiary is currently and will

continued to be employed in a primarily executive or managerial capacity with the petitioning entity.

First, the petitioner claims that the beneficiary was employed in a managerial capacity overseas; yet, the petitioner does not provide any comprehensive description of the beneficiary's job responsibilities. The beneficiary's resume lists his job prior to his current position with the petitioning entity as "Interim Ship Captain;" however, no details about the beneficiary's duties are provided. Without a listing of the beneficiary's job duties, the Service cannot determine whether the beneficiary's position was primarily executive or managerial.

Second and finally, 8 C.F.R. 204.5(j)(5) requires a petitioner to submit a job offer in the form of a statement, which clearly describes the duties to be performed by the alien. The petitioner's description of the beneficiary's job, which includes surveying ports and negotiating with port authorities and maritime personnel, is not indicative of a job that is comprised of either primarily managerial or executive duties. Therefore, the Service is not persuaded to find that the beneficiary is currently employed and would continue to be employed in either a primarily executive or managerial capacity.

Accordingly, this case will be remanded to the director so that he can further explore the issues mentioned in the preceding paragraphs and enter a new decision. The director may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The petition is remanded to the director for entry of a new decision in accordance with the foregoing.