



B4

U.S. Department of Justice

Immigration and Naturalization Service

Removing data deleted to prevent clearly unwarranted invasion of personal privacy

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



File: [Redacted]

Office: VERMONT 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:



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

Robert P. Wiemann, Director
Administrative Appeals Office



DISCUSSION: The Director of the Vermont Service Center denied the immigrant visa petition, and the Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is again before the Associate Commissioner on motion to reopen. The motion will be granted. The previous decisions of the director and the Associate Commissioner will be affirmed.

The petitioner is a Virginia corporation that claims to be engaged in international transportation. It seeks to employ the beneficiary as its general 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 record did not show that (1) a qualifying relationship existed between the petitioner and the overseas entity, and (2) the beneficiary is currently and will continue to be employed by the U.S. entity in a primarily executive or managerial capacity.

On appeal, the Associate Commissioner overturned the director's finding that a qualifying relationship between the petitioner and the overseas entity did not exist. Nevertheless, the appeal was dismissed because the petitioner did not overcome the director's determination that the beneficiary was not working and would not continue to be employed in a primarily executive or managerial capacity. The Associate Commissioner further noted that the record did not contain sufficient evidence that the petitioner had been doing business for at least one year at the time the petition was filed.

On motion, counsel submits a brief and additional evidence. Counsel states, in part, that the beneficiary functions primarily as an executive or manager and that the petitioning entity has been engaged in the regular, systematic, and continuous provision of goods and/or services.

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 first issue to be examined is the beneficiary's role with the petitioning entity; the petitioner seeks the services of the beneficiary as its general manager.

Both the director and the Associate Commissioner found that the beneficiary does not function primarily as a manager or an executive. Specifically, the Associate Commissioner stated that the beneficiary's job description did not demonstrate that the beneficiary has managerial control and authority over a function, department, subdivision or component of the petitioner, or that the beneficiary manages a subordinate staff who could relieve her from performing nonqualifying duties.

On motion, counsel states that the beneficiary functions in a managerial/executive capacity with the petitioning entity. Counsel maintains that the beneficiary manages a subordinate staff of marketing representatives, a corporate counsel and an accountant. Counsel further argues that the beneficiary's role as the project director for the "Port of Lapland Gateway Project" also evidences her primarily managerial and executive position. In support of counsel's claims on motion, the petitioner submits numerous documents, which include, but are not limited to, the beneficiary's job description and an organizational chart.

Evidence submitted on motion does not persuade the Service to overturn the previous decisions to deny the instant petition, as the petitioner presents evidence on motion that contradicts evidence already included in the record. Therefore, the Service cannot determine, with any degree of certainty, the job duties and the level of the beneficiary's responsibilities with the petitioning entity.

On the I-140 petition, the petitioner indicated that it employed two individuals. The information on the I-140 petition was consistent with the petitioner's payroll records and an organizational chart that the petitioner submitted in response to the director's Request for Further Evidence (RFE). According to the payroll records and the organizational chart, the petitioner employed two persons, who were the Vice President (Ravi Sikand) and the beneficiary.

On motion, the petitioner presents evidence about its staffing levels that conflicts with the evidence cited above. First, the petitioner presents a new organizational chart, which indicates that the beneficiary supervises a corporate counsel and a senior marketing representative. The organizational chart also indicates

that the senior marketing representative supervises six marketing representatives. Second, the petitioner submits a contract between it and a contractual sales representative, Robert Prebus, which is dated in November of 1997.

Never prior to the motion, did the petitioner claim that it employed more than two individuals. The petitioner initially stated that it employed only the beneficiary and the Vice President, but now contradicts itself by claiming that it employs at least ten individuals. Such an apparent change in the petitioner's organizational structure casts doubt on the veracity of the petitioner's and counsel's claims on motion. While it is noted that the petitioner may consider its sales representatives to be contractual employees, these individuals would still be considered employees for the purpose of an organization's staffing levels. The petitioner's failure to explain why it now claims a more extensive staff than what was initially claimed in the I-140 petition filing casts doubt on the veracity of the evidence in the record.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

Without credible evidence of the petitioner's staffing levels, the Service cannot determine whether the beneficiary functions primarily as an executive or a manager, as staffing levels provide insight into the beneficiary's role within the organization given its staffing resources. Accordingly, the petitioner fails to convince the Service that the beneficiary merits immigrant visa classification as a multinational executive or manager, as the petitioner fails to clearly depict its organizational structure.

The issue of whether the petitioner was engaged in the regular, systematic, and continuous provision of goods and/or services for at least one year at the time the petition was filed will not be addressed at this time, as the denial of the petition is affirmed on another ground.

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 previous decision of the Associate Commissioner, dated November 7, 2000, is affirmed.