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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.
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Washington, D.C. 20536



File: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: 11 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 California Service Center approved the immigrant visa petition. Upon subsequent review of the petition, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director served the petitioner with notice of her intent to revoke the approval of the preference visa petition, and ultimately revoked the approval of the petition on April 18, 2000 after proper notice. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a California importer of porcelain that seeks to employ the beneficiary as its import 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 revoked the petition because the record did not show that (1) the overseas entity employed the beneficiary in a primarily executive or managerial capacity prior to his entry into the United States as a nonimmigrant, and (2) the petitioner currently employs and will continue to employ the beneficiary primarily as a manager.

On appeal, counsel submits a brief.

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 revoked the petition for two reasons. First, the petitioner failed to provide a comprehensive job description for the beneficiary's position with the overseas entity. Such an omission did not enable the director to determine whether the beneficiary acted in a primarily managerial capacity or whether the beneficiary merely held a managerial title. Second, the

director found that the organizational chart for the petitioning entity's operations indicated that the beneficiary performed the import functions, rather than directing other individuals to perform those functions. The director also noted that the organizational chart did not support a finding that the beneficiary manages an essential function.

On appeal, counsel states that the beneficiary functioned primarily as a manager with the overseas entity because documents previously submitted into the record indicated that the beneficiary held the title of "factory director" and the beneficiary's overseas employer verified that it employed the beneficiary as a sales manager. Counsel further states that documents previously submitted also indicated that the beneficiary was the legal representative of the overseas entity. Counsel presents an excerpt from the local Chinese commerce administration, which states that the legal representatives of corporations in China are usually high-ranking officers in the corporations. Counsel maintains that this evidence shows that the beneficiary functioned primarily as a manager since, as a legal representative, the beneficiary was a high-ranking officer of the overseas entity.

Counsel further addresses the director's finding that the beneficiary does not function primarily as a manager for the petitioning entity. On appeal, the petitioner submits an affidavit from the petitioner's president, who states that he has delegated full power and authority to the beneficiary to manage, direct, control and oversee the import and sales functions of the petitioning entity's operations. The petitioner also submits letters from its clients, who state that they are aware that the beneficiary is a manager with the petitioner. Finally, counsel states that the Service should consider that the petitioner is a family-owned business and that the beneficiary is the son of the petitioner's owner. Counsel maintains that in a family-owned business, it is both "common and reasonable that immediate family members hold key managerial/executive functions." According to counsel, the beneficiary does not perform the day-to-day functions, as the subordinate warehouse staff and the secretary execute these types of mundane day-to-day duties.

The first issue to address is whether 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 as a nonimmigrant.

The Service does not concur with counsel that the position of the beneficiary within the organizational structure of the overseas entity indicates that he functioned primarily as an executive or a manager.

The petitioner has never supplied the Service with a comprehensive

description of the beneficiary's job duties for the overseas entity. Merely stating that the beneficiary was employed in a managerial position is not sufficient evidence for the Service to conclude that the beneficiary functioned primarily in a managerial capacity. Without a complete breakdown of the beneficiary's job functions, the petitioner has not met its burden of showing that the beneficiary's overseas position qualifies as a primarily managerial job. Therefore, there is little evidence to find that the beneficiary was employed in a primarily managerial or executive capacity for at least one year in the three years immediately preceding the beneficiary's entry into the United States as a nonimmigrant.

The second issue to address is whether the beneficiary is currently and will continue to be employed in a managerial capacity with the petitioning entity. It is noted that the petitioner is seeking classification of the beneficiary as a multinational manager, not as a multinational executive. 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).

According to the petitioner, the "[b]eneficiary reports to the president alone and is the highest level employee with the import/sales department." The petitioner also states that the beneficiary "supervises a warehouse employee and a secretary." The type of organizational structure described by the petitioner does

not lead to a conclusion that the beneficiary works in a primarily managerial capacity, as that term is defined above.

The petitioner has never clearly outlined how the beneficiary manages the import/sales department. The petitioner merely relies upon the beneficiary's ranking in the organizational hierarchy as a basis for stating that the beneficiary functions primarily as a manager. However, the Service determines whether a position is supervisory, professional or managerial by reviewing the job duties associated with the position, not by looking at the title of the position. The title of a position, by itself, does not provide the degree of detail the Service requires to determine an employee's role within a company.

The petitioner has never listed or explained with any degree of detail the beneficiary's job duties as the import/sales manager. The petitioner solely states that the beneficiary supervises a secretary and a warehouse employee; however, neither of these two positions is either professional, supervisory, or managerial, which would lead to a conclusion that the beneficiary supervises professional-level employees. Furthermore, without a thorough depiction of the beneficiary's job duties, the Service cannot determine whether the beneficiary performs only managerial duties, or whether he also executes non-managerial tasks.

Finally, the petitioner has not sufficiently shown how the beneficiary exercises direction over the day-to-day operations of the import/sales department. It is not satisfactory for the petitioner to state that the beneficiary supervises a staff of two employees and is a high-ranking member of the organization. The petitioner bears the burden of explaining, through detailed examples, how the beneficiary exercises his discretion to ensure that the day-to-day tasks that the import/sales department must execute get accomplished. Overall, the record lacks a detailed job description for the beneficiary, which would shed light on how he primarily performs managerial functions. Accordingly, the director's decision will not be disturbed.

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.