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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

[redacted]

File: WAC 99 143 54630 Office: CALIFORNIA SERVICE CENTER Date: 25 JAN 2002

IN RE: Petitioner: [redacted]
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:

[redacted]

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

Myra L. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California 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 California hotel that 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 evidence in the record did not support a finding that the petitioner would employ the beneficiary in a primarily managerial or executive capacity upon the approval of the petition.

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 denied the petition due to the petitioner's failure to persuasively establish that the beneficiary, as the general manager of a hotel that employs eight persons, would be primarily engaged in managerial or executive duties. On appeal, counsel outlines his reasons for finding that the beneficiary can be classified as both a manager and an executive; however, as shall be discussed, counsel's statements on appeal, which shall be discussed below, are not persuasive.

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 would primarily direct the management of the organization or a major component or function of the organization. Therefore, the Service is not persuaded to classify the beneficiary as an executive.

According to the organizational chart, the beneficiary is subordinate to the president of the petitioner. While counsel contends that the beneficiary works in a primarily executive capacity, he does not provide sufficient evidence for the Service to reach the same conclusion. In order for the Service to be persuaded that the beneficiary, not the president, is employed in a primarily executive capacity, the petitioner would need to provide a comprehensive job description for the president and contrast the job duties of the president against the job duties of the beneficiary as the general manager. The petitioner, however, does not provide this evidence and, therefore, the Service cannot determine which position (president vs. general manager), if any, could be considered primarily executive. Accordingly, the record, as presently constituted does not support a finding that the beneficiary's proposed job would be primarily executive in nature.

II. MANAGERIAL CAPACITY

In order to be found eligible for this immigrant visa classification as an 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's proposed position as general manager is primarily managerial in nature.

First, the petitioner does not explain, with any degree of detail, how the beneficiary manages the petitioner or a function of the petitioner. On appeal, counsel states that the petitioner clearly stated that the beneficiary will manage and direct all activities of the petitioner. Thus, counsel concludes that because the petitioner made this statement, there is sufficient evidence that the beneficiary would work in a primarily managerial capacity.

Despite counsel's claims, however, the petitioner cannot merely state that the beneficiary would manage the organization without providing clear and specific examples of how the beneficiary would execute managerial tasks for the primary amount of her time. Simply stating that the beneficiary would "maximize revenues and minimize costs" does not demonstrate that the beneficiary's job is primarily managerial in nature. An employee may maximize revenues or minimize costs by executing duties that are not managerial in nature.

Second and finally, the petitioner fails to present information to support its claim that its employees, who are subordinate to the beneficiary, occupy supervisory, managerial or professional positions. The petitioner contends that the beneficiary supervises one front desk supervisor, three front desk employees, and an undisclosed number of part-time maids and maintenance workers. Counsel argues that the position of front desk supervisor is a managerial position; however, in a hotel with eight employees who must work shifts to cover the twenty-four hour day, it does not appear plausible that the front desk supervisor would primarily be engaged in managerial duties. Furthermore, the petitioner states that the front desk manager "[i]n essence, . . . currently supervises and manages the running

of the hotel." If the front desk supervisor manages the hotel's operations, then the beneficiary's role within the organizational structure has not been clearly defined, as the petitioner asserts that the beneficiary is the person responsible for managing and, in essence, running the petitioner's hotel operations. Based upon the evidence submitted in support of the petition, the petitioner has not established that the beneficiary primarily functions as a manager.

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.