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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: WAC 99 122 54056 Office: CALIFORNIA SERVICE CENTER Date: 25 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


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 corporation that claims to be engaged in trading and consulting. 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 evidence of record did not show that the petitioner currently employs and will continue to employ the beneficiary primarily in a managerial capacity.

On appeal, the petitioner submits a statement. The petitioner argues, in part, that that beneficiary works primarily as a manager, a fact that the Service has confirmed in its approval of an L-1A nonimmigrant petition in the beneficiary's behalf.

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 petitioner seeks the services of the beneficiary as a multinational manager, not as a multinational executive. In her denial letter, the director stated that the evidence indicated that the beneficiary has been and will be functioning as a first-line supervisor who is in charge of four non-professionals of a business that operates on a small scale. The director noted that this type of organizational structure did not lead to a conclusion that the beneficiary would be primarily engaged in managerial duties.

On appeal, the petitioner presents several arguments in response to the director's decision to deny the petition. Each argument shall be separately addressed.

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).

First, the petitioner states that the beneficiary manages the organization because she "has full power and authority to manage Golden Variety Corp." The petitioner further states that there is "no one else on top of her position in this company."

Second, the petitioner states that the beneficiary controls the work of three employees, who are the project manager, the accounting manager, and the sales manager. The petitioner further notes that the beneficiary manages an essential function, but does not specify the essential function.

Third, the petitioner claims that the beneficiary has the authority to hire and fire employees and, finally, the petitioner maintains that the beneficiary controls the day-to-day operations of the company.

The petitioner also notes that the Service has approved an L-1A nonimmigrant visa petition in the beneficiary's behalf in the

past, which indicates that the Service has recognized that the beneficiary works in a primarily managerial capacity.

The Service does not find the petitioner's evidence on appeal to be persuasive. As the record is presently constituted, the petitioner has not clearly established that the petitioner employs a sufficient staff to execute the day-to-day operational tasks in order for its business to operate. Such a lack of evidence regarding the petitioner's employees does not enable the Service to find that the beneficiary is employed primarily as a manager.

The position titles and job duties of each employee in a company are crucial pieces of evidence that the Service looks to in determining whether an individual functions in a primarily managerial capacity. In the instant petition, the petitioner provides very vague and generalized information about the employees who are allegedly subordinate to the beneficiary. Such scant information about the role of the petitioner's employees does not enable the Service to find that the beneficiary manages supervisory, professional or managerial employees, or an essential function.

According to the petitioner, it employs, in addition to the beneficiary, a sales manager, a project manager, and an accounting manager. The petitioner lists the job of the sales manager as "collecting the information about new drugs and health supplements," and "looking for manufacturer who are [sic] interested in developing the [C]hinese market." Neither of these job duties is managerial in nature, as both job duties comprise basic research and marketing duties. Additionally, the petitioner describes the job of the project manager as "being in charge of the project about TianJiang Waterworks." The term "being in charge" may convey some managerial responsibilities, but overall, the term does not provide any insight into the duties that the project manager must execute. Therefore, even though the petitioner may assign managerial titles to its employees, it has not persuasively established through the job descriptions that the duties are primarily managerial. It is clear from reading the job descriptions of the employees who are allegedly subordinate to the beneficiary that the beneficiary does not manage supervisory, managerial or professional employees, despite the employees' job titles or their educational backgrounds.

Although the petitioner asserts that the beneficiary manages an essential function, the petitioner does not clearly define the function that the beneficiary allegedly manages. The petitioner describes the essential function within the organization as "setting the corporate policies, decision-making on human resources management, controlling on credit policy, management the corporate financials, [and] accounting and investment activities." The petitioner does not explain how these broadly defined job duties comprise an essential function of its operations.

Accordingly, the petitioner has not established to the satisfaction of the Service that the beneficiary is employed primarily in a managerial capacity.

Finally, the petitioner suggests on appeal that this petition must be approved because the beneficiary was previously granted nonimmigrant classification as an L-1A manager. The director's decision does not indicate whether the beneficiary's nonimmigrant file was reviewed. Copies of the initial L-1A nonimmigrant visa petition and supporting documentation are not contained in the record of proceeding. Therefore, it is not clear whether the beneficiary was eligible for L-1A classification at the time of the original approval, or if the approval of the L-1A nonimmigrant classification involved an error in adjudication. However, if the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in this immigrant petition, the approval would constitute clear and gross error on the part of the Service. As established in numerous decisions, the Service is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., Sussex Engg. Ltd. v. Montgomery, 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988); Matter of Church Scientology Int'l., 19 I&N Dec. 593, 597 (BIA 1988).

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.