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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



File: EAC 99 168 50057

Office: VERMONT SERVICE CENTER

Date 28 FEB 2002

IN RE: Petitioner:
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:



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 Vermont 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 Massachusetts corporation that is engaged in international travel and educational intern programs. It seeks to employ the beneficiary as its project 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 did not demonstrate that the petitioner currently employs and will continue to employ the beneficiary in a primarily executive or managerial capacity.

On appeal, counsel submits a brief and additional evidence.

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.

In his denial letter, the director stated that the evidence failed to indicate that the beneficiary supervised and controlled the work of other supervisory, professional or managerial employees who could relieve the beneficiary from performing nonqualifying duties. The director further noted that the size and scope of the petitioner's operations could not support a position that was primarily executive or managerial in nature.

On appeal, counsel details the petitioner's organizational structure in order to show that the beneficiary functions primarily as an executive or manager. According to counsel, the beneficiary serves as the project manager of the educational

department, and answers only to the president; the beneficiary supervises one supervisor of the educational department and a part-time secretary. Counsel asserts that because the educational department, which controls all of the company's educational programs, is the main focus of the petitioner's operations, then the beneficiary manages an essential function. Counsel maintains that the beneficiary exercises discretion over the day-to-day activities of the educational department, has the authority over all personnel decisions, supervises a supervisory employee, establishes the goals and policies of the department, signs contracts on behalf of the petitioner, manages the market planning, and receives only general supervision from the petitioner's president.

Additionally, counsel notes that the petitioner has provided a detailed job description for the beneficiary and has included an excerpt from the beneficiary's weekly schedule in order to show that the beneficiary executes executive and managerial tasks. Counsel cites several unpublished decisions from the Administrative Appeals Office (AAO) in support of his claim that the petitioner's submission of detailed descriptions of the beneficiary's job duties show that the beneficiary manages an essential function.

Finally, counsel suggests that this immigrant petition should be approved because the Service previously approved an L-1A nonimmigrant petition in the beneficiary's behalf. According to counsel, the duties of the beneficiary have not changed from how they were represented in the L-1A nonimmigrant petition filing.

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 works in a primarily executive role because it fails to establish that the beneficiary directs the management of a major component or function of the organization.

The petitioner claims that the beneficiary manages the educational department, which is a cornerstone of its operations. However, a review of the beneficiary's job duties indicates that the beneficiary, himself, executes many of the activities that are necessary for the educational department to operate, rather than managing or directing those activities through others.

In the initial I-140 petition filing, the petitioner listed the beneficiary's duties as:

- ❖ Seeking out an appropriate location in the Boston area;
- ❖ [N]egotiating a lease for the premises;
- ❖ [A]nalyzing all legal and insurance aspects of this venture;
- ❖ [C]alculating prospective budget and profit statements;
- ❖ [D]etermining staffing and program issues;
- ❖ [D]efining marketing and advertising strategy;
- ❖ [S]ponsor and grant issues;
- ❖ [A]nalyzing possibility of expanding to creation of all year private school
- ❖ Implementation of International Study Semester Program
- ❖ Marketing Planning

The Service contends that none of the job duties listed above is a task that is executive in nature, particularly one that shows that the beneficiary directs the management of the educational department. Locating appropriate business space, negotiating a lease and calculating budget costs are not considered executive duties, as they are basic administrative tasks that non-executive personnel normally perform. In addition, the term "market planning" is rather vague and is not a job duty that only an executive executes.

Furthermore, the example of the beneficiary's schedule for one week in April of 2000 also does not evidence that he directs a major component of the organization on a primary basis. Many of the duties that the petitioner lists, such as meeting with clients and advertising contractors, are job duties of a person who is primarily engaged in the marketing and sales of a business. The petitioner has not explained how these activities involve directing the educational department.

Based upon the above discussion, there is insufficient evidence to establish that the beneficiary functions primarily as an executive.

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 functions primarily as a manager.

The petitioner claims that the beneficiary manages an essential function of its operations, which is the educational department, and manages a supervisory employee; however, the petitioner's organizational chart and its description of the employee's job duties do not support such a finding.

The petitioner states that the educational department is comprised of the beneficiary, who is the project manager, and another supervisor within the department. The petitioner lists the supervisor's duties as "responsible for Athletic Club for kids project issues, reports to [redacted] [the beneficiary]." The petitioner also submits a list of the projects for which the beneficiary is responsible. These duties include "marketing documents," "financial documents," "advertising," "contracts and agreements," and "licensing and insuring." An example of two job duties that are listed under "contracts and agreements" are "leasing of land for school" and "contract with the supplier of

office and sport equipment.”

The types of duties that both the beneficiary and the supervisor execute comprise the heart of the petitioner's operations for the educational department. Without these tasks being accomplished, the petitioner's educational programs would not be operational. Therefore, if the beneficiary is conducting the business that is necessary for the petitioner's educational programs to operate, then the beneficiary is not managing an essential function. Rather, despite counsel's statement on appeal that the beneficiary exercises discretion over the day-to-day activities of the educational department, the evidence shows that the beneficiary, himself, is performing the day-to-day activities by working primarily as a sales person, marketing person and accountant.

Furthermore, while the petitioner assigns a supervisory title to the supervisor of the educational department, this employee does not supervise anyone. There is also no evidence that the employee supervises a project. The petitioner's assertion that the supervisor is responsible for the issues that may arise in a particular project is not enough to establish that the individual is working as a supervisor, a manager, or in a professional position.

Accordingly, the petitioner has also failed to establish that the beneficiary works in a primarily managerial capacity and, therefore, is ineligible for the immigrant visa classification being sought.

Regarding the unpublished AAO decisions that counsel cites on appeal, while 8 C.F.R. 103.3(c) provides that Service precedent decisions are binding on all Service employees in the administration of the Act, unpublished decisions are not similarly binding. Regarding counsel's suggestion that this petition must be approved because the beneficiary was previously granted nonimmigrant classification as an L-1A nonimmigrant, the Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v. INS, 2000 WL 282785 (E.D.La. 2000), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S. Ct.51 (U.S. 2001).

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.