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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: [Redacted] Office: VERMONT SERVICE CENTER Date: 29 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:

[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 Vermont Service Center approved the immigrant visa petition. Upon review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director served the petitioner with notice of his intent to revoke the approval of the preference visa petition, and ultimately revoked the approval of the petition on September 17, 1999 after proper notice. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a New Jersey corporation that is engaged in trade. It seeks to employ the beneficiary as its president 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 currently employs and would continue to employ the beneficiary in a primarily managerial or executive 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.

The director revoked the petition due to the petitioner's failure to submit evidence of the beneficiary's primary role as an executive or manager. On appeal, counsel states that the revocation appeared to be based solely on the photographs of the petitioner, as the director mentioned that the petitioner did not have any sample products or factory space. Counsel contends that if the director had revoked the petition on the basis of

photographs alone, the director was in error in using the photographs as evidence that the beneficiary does not work in a primarily executive or managerial capacity.

Counsel maintains that the evidence shows that the beneficiary works primarily as a manager or an executive. First, counsel notes that the petitioner is a viable entity. Second, counsel notes that the petitioner employs professional individuals whom the beneficiary supervises. Third and finally, counsel notes that the petitioner submitted comprehensive job descriptions for all of its employees to show that there is a sufficient staff to relieve the beneficiary from performing nonqualifying duties.

Evidence in this case does not persuade the Service to overturn the director's decision to revoke the petition. As shall be discussed, the petitioner fails to adequately demonstrate that the beneficiary devotes the primary amount of his time to executing executive or managerial duties.

#### **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 the organization or a major component or function of the organization.

In response to the director's notice of his intent to revoke the petition, the beneficiary submitted a description of his job duties and the job duties of the petitioner's five other employees. The beneficiary described his job duties as follows:

As to my own activities, I spend 100% of my time on executive and managerial decision making. Some of the

executive and managerial decision-making I have carried out includes hiring and firing employees, formulating corporate policies and objectives, and ensuring their full implementation. . . . I have also approved major transactions and directed and coordinated the activities of my staff in carrying out the different projects that are being undertaken. I also make decisions regarding the allocation of resources and approve expenditures. I have full discretionary authority from my parent company to make a purchase payment of up to [REDACTED] and unlimited authority to negotiate contracts. Finally, I evaluate employees regarding the following aspects of their performance: sales achieved[,] customer relations, phone manner, ability to work independently after initial instruction, and so on.

Although the beneficiary's description of his job is lengthy, it does not provide any insight into his daily activities. In particular, it does not evidence that the beneficiary directs the management of the organization.

First, the Service contends that it is unrealistic for a beneficiary to spend 100% of his time devoted to executive or managerial tasks, particularly in a small trading organization such as the petitioner's. The regulations only require a beneficiary to devote a *primary* amount of his or her time to executive duties, and the beneficiary's claim that he executes executive tasks 100% of the time appears inflated.

Second, the beneficiary claims that he "formulates corporate policies and objectives, ensuring their full implementation." While these duties may appear to be executive in nature, they are merely broad statements that do not provide any insight into the beneficiary's daily activities. For example, the beneficiary does not detail the policies and objectives that he formulates or explain how he ensures their full implementation.

Third and finally, the beneficiary's description of his other duties are also vague. The beneficiary states that "I have also approved major transactions and directed and coordinated the activities of my staff in carrying out the different projects that are being undertaken." However, the beneficiary fails to elaborate on these broad statements regarding his duties. Similarly, the beneficiary's statement that "I also make decisions regarding the allocation of resources and approve expenditures" is not a meaningful depiction of his daily activities.

There is insufficient evidence for the Service to conclude that the beneficiary directs the management of the petitioner as a primary job responsibility. Therefore, the beneficiary is not

working in an executive capacity as that term is defined in the regulation.

## 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.

First, the petitioner does not explain, with any degree of detail, how the beneficiary manages the petitioner or a function of the petitioner. As stated in the previous section, the beneficiary's own description of his role with the petitioner consists of generalized statements about the duties that he executes. None of these statements establishes that the beneficiary primarily manages the petitioner or a function of the petitioner.

Second and finally, although the petitioner claims that the beneficiary manages professional and managerial employees, the evidence in the record does not support such an assertion. According to the beneficiary, he supervises a marketing manager, whose duties are listed as "marketing, customer relations, [and] solvent recovery accounts." None of these duties is managerial, as it is obvious that the individual performs the marketing and

related activities rather than managing those activities through other individuals. Furthermore, such a job description for the marketing manager is not a comprehensive job description, as counsel states on appeal. Despite the individual's managerial title, the scant job description does not indicate that he works in a managerial role.

In addition, the beneficiary lists the other subordinate employees as a bookkeeper, a salesperson, a technician, and a warehouse worker. None of these positions is a professional position, despite the beneficiary's assertion that each individual is a "professional."

Evidence in the record does not show that the beneficiary manages a subordinate staff of managers, supervisors, or professionals, which makes the beneficiary a first-line supervisor to non-professional employees. Although the petitioner is not required to show that the beneficiary manages individuals as long as it can establish that the beneficiary manages an essential function, the petitioner has not presented any evidence that the beneficiary manages an essential function. As previously stated, the petitioner relies upon generalized and unsupported statements about the beneficiary's role with the company in order to persuade the Service that the beneficiary merits classification as a multinational executive or manager. Unfortunately, however, such statements, without supporting evidence are not sufficient to meet the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

It appears that in this case, the director erred in approving the I-140 petition upon its initial filing. Because an approved visa petition is merely a preliminary step in the visa application process and does not guarantee that the visa will be issued, the director had the discretion to revisit the approval and issue the notice of intent to revoke for good and sufficient cause. The final notice of revocation was also proper.

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 its burden of showing that the beneficiary primarily works and will continue to work in an executive or managerial role.

**ORDER:** The appeal is dismissed.