



U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC

Handwritten initials: BPH

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

JAN 29 2009

File: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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]

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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

Signature of Robert P. Wiemann
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 the distribution and service of computer products. It seeks to employ the beneficiary as its technical 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 record did not show that (1) the beneficiary was employed by the overseas entity in an executive or managerial capacity, or (2) the beneficiary will be employed by the United States entity in a primarily executive or managerial capacity.

On appeal, counsel submits a statement 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.

One basis for the director's denial was that the petitioner failed to show that the overseas entity employed the beneficiary in a primarily executive or managerial capacity. The director noted that the evidence appeared to indicate that the beneficiary was merely a first-line supervisor to non-professional employees.

On appeal, counsel contends that the beneficiary, who held the position of Technical Manger with the overseas entity, was employed in a primarily managerial capacity. In support of his claim, counsel presents a letter from Tony Chen, the petitioner's

general manager, who describes the beneficiary's role with the overseas entity. Counsel believes that Mr. Chen's letter contains evidence to show that the beneficiary had the qualifying experience with the overseas entity.

Evidence in the record does not support the petitioner's claims that the beneficiary possessed the requisite experience with the overseas entity to qualify her for this immigrant classification. As shall be discussed, the record contains discrepant information regarding the beneficiary's prior employment experience, which calls into question the veracity of the evidence that has been submitted in this case.

8 C.F.R. 204.5(j) states in pertinent part:

(3) *Initial evidence--*

(i) *Required evidence.* A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;

The record reflects that the beneficiary entered the United States on April 22, 1996 in B-1 status. The record contains a January 10, 1998 employment verification letter from the overseas entity, [REDACTED]. According to the general manager of the overseas entity, who wrote the letter:

This is to certify that [REDACTED] worked at our company from January 1995 to September 1996. She was employed in the capacity of Technical Manager.

The Service notes that the overseas entity claims that it employed the beneficiary until September 1996, even though the evidence

clearly indicates that the beneficiary entered the United States in April of 1996. Although it could be plausible for the beneficiary to have remained on the overseas entity's payroll after her entry into the United States, other evidence in the record calls into question whether the beneficiary was employed by the overseas entity at any time, in any capacity.

The record contains the beneficiary's Application to Extend/Change Nonimmigrant Status (Form I-539), which the beneficiary filed with the Service on May 18, 1996. As previously stated, the beneficiary entered the United States on April 22, 1996 in B-1 status, and she submitted the Form I-539 to request an extension of her stay in that nonimmigrant status. In support of the beneficiary's request is a May 15, 1996 letter from Aiqing Li, the president of Asian Pacific (USA) Inc., who states the following:

[redacted] [the beneficiary], respectively, are Vice General Manager and Business Manager of [redacted] & [redacted] in Tianjin, China. . .

The letter from Asian Pacific (USA) Inc. contradicts the overseas entity's [redacted] claim that it employed the beneficiary from January 1995 until September 1996. At the time Asian Pacific (USA) Inc. wrote the letter in May of 1996, it claimed that the beneficiary was employed by [redacted] Cooperative Corporation, not by the petitioner's parent company, Beijing [redacted]. There is no evidence to indicate that [redacted] and Tianjin Teda International Economic & Technical Cooperative Corporation are the same company. Furthermore, both companies provide different job titles for the beneficiary and are located in different cities in China [redacted].

A statement, or claim, or document is "fraudulent" if it was falsely made, or caused to be made, with the intent to deceive. To act with "intent to defraud" means to act willfully, and with the specific intent to deceive or cheat; ordinarily for the purpose of either causing some financial loss to another, or bringing about some financial gain to oneself. Black's Law Dictionary (Fifth Edition, West Publishing Company, 1979).

¹ The Service also notes that on the Form I-539 that the beneficiary filed on May 18, 1996 to extend her B-1 nonimmigrant status, the beneficiary listed her foreign address in Tianjin, China. However, on a second Form I-539 that the beneficiary filed with the Service on July 18, 1996 in order to change her nonimmigrant status from B-1 to H-4, the beneficiary listed her foreign address in Beijing, China.

While the Service is unable to definitively determine whether both letters are fraudulent, it is clear that at least one of the two letters was falsely made with the intent to deceive the Service in order to gain a benefit under United States immigration laws. The beneficiary could not have been employed by two different companies in two different cities and in two different capacities during the same period of time.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Matter of Ho, 19 I&N Dec. 582, 591 (BIA 1988). Based upon the discussion, the Service doubts the reliability of the remaining evidence that has been submitted in support of the visa petition. Therefore, in addition to failing to establish that the beneficiary was employed by the overseas entity in an executive or managerial capacity for the requisite period of time, the petitioner also fails to establish that the beneficiary's proposed employment will be in an executive or managerial capacity.

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.