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U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

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



File: WAC 99 134 54488

Office: CALIFORNIA SERVICE CENTER

Date:

29 JAN. 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:



Accounting data deleted to prevent clearly unwanted 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

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 runs a hotel. 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 copies of documents that are already included in the record.

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 based upon her conclusion that the type of the petitioner's business and the number of its employees could not support a primarily executive or managerial role. The director stated that:

Based upon the type of business of the petitioner (motel management and operation), and because the petitioner is only comprised of a small amount of employees, the beneficiary will not be serving primarily and substantially all of the prospective job duties in an executive or managerial capacity, as defined above. Rather, in difference to the job

description stated by the petitioner, the beneficiary must be involved and participating in the day-to-day, non-executive aspects of the business. Further, the beneficiary will not be primarily and substantially serving in a managerial capacity, since the individual under the direction of the beneficiary will not be serving in a supervisory, managerial, or professional capacity. . . .

On appeal, counsel states that the beneficiary's role with the petitioner meets both the definition of managerial capacity and the definition of executive capacity. Regarding the definition of managerial capacity, counsel claims that the beneficiary manages the petitioner and an essential function, because the petitioner believes that the beneficiary is the only person who can effectively develop the United States subsidiary. Counsel also maintains that the beneficiary has the authority over all personnel matters and supervises employees. Counsel further claims that the beneficiary's duties include the "exercise of discretion over the day-to-day operations over the sales, production, and accounting departments of the company."

Regarding whether the beneficiary serves the petitioner in an executive capacity, counsel states that the beneficiary establishes the goals and policies of the petitioner and adds that "[a]s evidenced by the attached statement of job duties by the [p]etitioner, it is clear that the [b]eneficiary's position is categorized as executive capacity."

A review of the record in this case does not lead to a conclusion that the beneficiary serves the petitioner in either a primarily executive or managerial role. Counsel's statements on appeal are not persuasive or supported by the evidence in the record.

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.

The petitioner's job description for the beneficiary appears to indicate that the beneficiary manages the petitioner. However, when viewed against the petitioner's organizational structure, the job description does not credibly depict the beneficiary's role with the organization. The petitioner described the beneficiary's job duties as follows:

Plans, develops, and establishes policies and objectives of Corporation; confers with company officials to plan business objectives, to develop organizational policies[,] to coordinate functions and operations between divisions and departments, and to establish procedures for attaining objectives. Reviews financial statements to determine progress and status in attaining objectives and revises objectives and plans in accordance with current conditions. Evaluates performance of executives for compliance with established policies and objectives of Corporation and contributions in attaining objectives.

The petitioner's organizational structure shows that the petitioner employs a president (the beneficiary), a front desk manager, a front desk clerk, and a housekeeper. None of these positions is an executive or managerial position; yet, the petitioner claims that the beneficiary "evaluates performance of executives . . ." The petitioner does not employ any executives for the beneficiary to evaluate; therefore, the petitioner's job description for the beneficiary does not realistically depict the beneficiary's job duties.

Furthermore, the petitioner does not claim that its operations are organized into divisions or departments and clearly, an organization that employs only four individuals in non-professional positions, would not be organized in such a manner. However, the beneficiary's job description indicates that he "coordinate[s] functions and operations between divisions and departments . . ." Again, the Service does not find the beneficiary's job description to be a realistic depiction of his job duties, as the petitioner seems to inflate the level of the beneficiary's responsibilities. The petitioner's organizational structure is not sophisticated or complex, which would require the beneficiary to manage operational divisions and departments.

The beneficiary's job description is not credible evidence of his

role in directing the management of the petitioner on a primary basis. Thus, the beneficiary is not working and would not continue to work 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 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).

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 petitioner has not provided a credible job description for the beneficiary. Therefore, its claims that the beneficiary manages the petitioner, or an essential function of the beneficiary, are not persuasive. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Second, regarding the supervision of employees, the petitioner fails to show that the beneficiary supervises and controls the work of other supervisory, professional, or managerial employees. On appeal, counsel states that the beneficiary satisfies a criteria outlined in the definition of managerial capacity because the beneficiary "has experience in the supervision of employees at the Hotel." Counsel, however, fails to note that the criteria to which he refers concerns the supervision of supervisory, professional or managerial employees, not just any type of employee. The petitioner did not present the job description for any employee other than the beneficiary; therefore, there is no evidence to show that any employee subordinate to the beneficiary occupies a supervisory, managerial or professional position.

Third and finally, the petitioner fails to present evidence to support its claim that the beneficiary exercises direction over the day-to-day operations of the activity or function for which he has authority. According to counsel, the beneficiary exercises discretion "over the day-to-day operations over the sales, production, and accounting departments of the company." However, as stated in a previous section, the petitioner does not present any evidence that it is organized into departments or divisions. The petitioner has never presented evidence that it contains a sales, production or accounting department, or described the roles of these alleged departments and their staffing allocations. Therefore, counsel's assertions, which do not constitute evidence, do not persuade the Service to find that the beneficiary exercises direction over the day-to-day operations, or works primarily in a managerial role. Accordingly, the objections of the director have not been overcome.

Finally, counsel refers to an unpublished decision involving an employee of the Irish Dairy Board. In the Irish Dairy Board case it was held that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee of the petitioning organization. Counsel has furnished no evidence to establish that the facts of the instant petition are in any way analogous to those in the Irish Dairy Board case. Furthermore, 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.

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.