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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: TEXAS SERVICE CENTER

Date: JUN 13 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]

PUR 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the state of Florida in July of 1997. The petitioner is engaged in the business of property management. It seeks classification of the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), as a multinational executive or manager. The director determined that the petitioner had not established that the beneficiary was engaged in a primarily managerial or executive position.

On appeal, counsel for the petitioner asserts that the Service's revocation of the approval of the petition is in error.

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.

Title 8, Code of Federal Regulations, section 204.5(j)(3) states:

(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;

(C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and

(D) The prospective United States employer has been doing business for at least one year.

The issue in this proceeding is whether the beneficiary has been and will be performing managerial or executive duties.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

i. manages the organization, or a department, subdivision, function, or component of the organization;

ii. 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;

iii. 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

iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the

supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision-making; and
- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. 204.5(j)(5).

In a letter submitted with the initial petition, the beneficiary described his duties for the petitioning company as follows:

I originally joined [the petitioner] on a temporary assignment to fill the position of President and Chief Executive Officer. In this position, I have been responsible for the overall direction and development of the company and supervise, hire and fire employees. I am well qualified to fill this position on the basis of my extensive managerial and executive experience with [the petitioner's parent company] in the Philippines. I was selected for transfer because I am most familiar with the company's organization, services and marketing strategies. I exercise wide latitude in discretionary decision-making. One hundred percent of my time is allotted to executive/managerial duties.

The petitioner also provided its Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return for the year 1999. The Form 1120 revealed gross receipts in the amount of \$249,509, compensation of officers in the amount of \$9,900 and salaries and

wages paid in the amount of \$4,707. The IRS Form 1120 for 1999 also included a description of its gross receipts as follows:

Commission Income	-	\$57,384
Management Fee Income	-	\$24,471
Lot Sales	-	\$167,654

The petitioner also described its business on the petition as "Health Care Linen Import, Export, Retail Sale & Wholesale."

The director requested further evidence in regards to the staffing level of the petitioner including the job titles of the employees and a description of duties performed.

In response, counsel for the petitioner provided the following information:

. . . [REDACTED] c. is doing business through [REDACTED] by providing property management services. As you will note from the enclosed quarterly and year-end reports, [REDACTED] has three employees on its payroll; however, the company uses a number of independent contractors, a property management industry standard. These independent contractors are used on a regular basis to provide cleaning, decorating, lawn care, maintenance and repair and pest control services for the properties managed by Lion's.

. . . the Administrative Secretary has been responsible for keeping official corporation records, preparing memorandums, planning conferences, directing preparation of records, performing publicity work and customer service. . . . Cleaning Supervisor, has been responsible for supervising cleaning of properties managed including carpet and pool.

The petitioner also included a record of a number of checks, signed by the beneficiary to various services used to maintain the properties.

The director determined that the petitioner had failed to establish that the beneficiary was engaged as an executive or manager. The director indicated that it appeared that the beneficiary was involved entirely in the day-to-day operations of the company.

On appeal, counsel for the petitioner asserts that the beneficiary is not involved entirely in the day-to-day operations of the company. Counsel states that the beneficiary "is currently outside the US trying to set up other operations in Belize." Counsel also states that the beneficiary "has other people who report to him who manage the organization on a day to day basis."

Counsel concludes that the beneficiary is both a manager and an executive.

Upon review, counsel's assertions are not persuasive. In examining the executive or managerial capacity of the beneficiary, the Service will look first to the petitioner's description of the job duties. See 8 C.F.R. 204.5(j)(5). The petitioner's description of the job duties is not sufficient to warrant a finding of managerial or executive job duties. The description of job duties is vague and general in nature, essentially serving to paraphrase the elements of the statutory definition of managerial and executive capacity. No concrete description is provided to explain what the beneficiary will do in the day-to-day execution of his position.

In addition, the 1999 IRS Form 1120 reflects that the gross receipts of the company are based not only on property management but also on the sale of lots. The petitioner has not provided any information on the selling aspect of the petitioner's business. The Service is left to conclude that the beneficiary is primarily performing this service for the company. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. Matter of Church Scientology International, 19 I&N Dec. 593, 604 (Comm. 1988).

Further, the record does not establish that a majority of the beneficiary's duties have been or will be directing the management of the organization. The record contains insufficient information regarding the beneficiary's actual day-to-day duties to allow a conclusion in this regard. 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).

Finally, counsel's statement that the beneficiary has other people who report to him who manage the organization is not supported in the record. The petitioner employs two individuals in addition to the beneficiary, both apparently on a part-time basis. The descriptions of the duties performed by the cleaning manager and the administrative secretary are vague and general in nature. There is insufficient information to conclude that either of these individuals manage the petitioner's day-to-day operations thereby relieving the beneficiary from performing non-qualifying duties. Likewise the petitioner's use of outside contractors to maintain the properties does not elevate the beneficiary to a managerial or executive position. At most, the beneficiary remains a first-line supervisor of non-professional, non-supervisory and non-managerial employees.

The Service is not compelled to deem the beneficiary to be a manager or an executive simply because the beneficiary possesses an executive title. The petitioner has not established that the

beneficiary has been employed in either a primarily managerial or executive 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.