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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: [redacted] Office: NEBRASKA SERVICE CENTER Date: 6 - MAR 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:
SELF-REPRESENTED

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 Nebraska Service Center denied the immigrant visa petition. The petitioner appealed that decision and the director treated the appeal as a motion to reopen or reconsider, as the appeal was not timely filed. The director affirmed his prior decision to deny the petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a steak restaurant that seeks to employ the beneficiary as its manager and endeavors to classify the beneficiary as a multinational manager 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 petitioner failed to establish that (1) the foreign entity employed the beneficiary as a manager for at least 1 year in the 3 years immediately preceding the filing of the petition, and (2) it would employ the beneficiary in a primarily managerial capacity.

On appeal, the petitioner submits a statement.¹

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 response to the petitioner's motion, the director stated that the beneficiary does not merit immigrant classification as a multinational executive or manager because the beneficiary "has not made in the past nor will make in the future significant decisions regarding Outback Steakhouse operations." The director

¹ Although [REDACTED] submitted a Form G-28 as the representative of the petitioner, this individual does not appear eligible to represent the petitioner in these proceedings pursuant to 8 C.F.R. 292.1(a).

found that the beneficiary's current role with the overseas entity and his proffered role with the petitioner would involve the performance of routine operational activities rather than the management of a function.

On appeal, the petitioner states that the beneficiary is the manager of "an entire business entity" and that each Outback Steakhouse restaurant is "an essential function of the business." The petitioner believes that the documentation it had previously submitted, which includes an organizational chart, a generalized description for the position of "manager" within an Outback Steakhouse restaurant, and a job offer for the beneficiary, sufficiently establishes the primarily managerial nature of both the beneficiary's overseas position and his proposed position with the petitioner.

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 director correctly found that the petitioner had not presented a comprehensive description of the beneficiary's current position as the manager of an Outback Steakhouse restaurant in Cancun, or a detailed depiction of the beneficiary's proposed position with the petitioning entity. The petitioner merely presents broad statements about the beneficiary's duties and fails to provide insight into the beneficiary's current and proposed daily

activities. For example, the petitioner states that the beneficiary "directs the management of a restaurant" yet it fails to explain how the beneficiary executes this job duty. To direct the management of a restaurant, the beneficiary may perform duties that could be classified either as managerial or non-managerial duties. By failing to delineate the beneficiary's job responsibilities between managerial and non-managerial functions, the petitioner does not sufficiently show that the primary amount of the beneficiary's time as a manager is consumed with executing managerial tasks.

The petitioner also does not establish that the beneficiary supervises employees at the managerial, supervisory or professional level. The petitioner claims that the beneficiary supervises 2 employees with managerial titles who, in turn, supervise other employees. In order for the Service to conclude that the beneficiary supervises 2 managers, the petitioner must provide a job description for each position. The Service determines whether a position is supervisory, professional or managerial by reviewing the job duties associated with the position, not by merely looking at the title of the position. The title of a position, by itself, does not provide the degree of detail required to determine an employee's role within a company. The petitioner only provides an organizational chart and does not list the job duties associated with each position. Without this information, it cannot be concluded that the petitioner supervises managerial, supervisory or professional employees.

Finally, the petitioner does not sufficiently detail how the beneficiary exercises direction over the day-to-day operations of the restaurant. It is not satisfactory for the petitioner to state that the beneficiary is responsible for sales and productivity. The petitioner bears the burden of explaining, through detailed examples, how the beneficiary exercises his direction over the day-to-day tasks that the restaurant must accomplish.

The record lacks a detailed job description for the beneficiary's current position with the foreign entity and his proposed position with the U.S. entity, which would shed light on how he primarily performs managerial functions. Accordingly, the petitioner fails to demonstrate that (1) the beneficiary was employed in a managerial position for at least 1 year in the 3 years immediately preceding the filing of the petition and (2) it would employ the beneficiary in a primarily 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.