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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: 12 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:



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. Roserly*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director of the Nebraska 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 Washington State corporation that manufactures, processes and exports meat products. 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 the evidence did not establish that the petitioner currently employs and would continue to employ the beneficiary in a primarily executive or managerial capacity.

On appeal, the petitioner submits a statement and additional evidence. The petitioner states, in part, that its business has greatly expanded since the filing of the petition.

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 because the petitioner's business operations, at the time it filed the petition, were not sufficiently sophisticated to support an individual who would be working in a primarily executive or managerial capacity.

On appeal, the petitioner states that in September of 2000, it purchased 27 acres of land and a vacant building to facilitate its expansion (and relocation), which is expected to include the purchase of a new facility, the hiring of 25-38 new employees, and an increase in the export of meat products. The petitioner also states that it hired two individuals in September of 2000 to help with the company's expansion. The petitioner reiterates that the

beneficiary establishes, directs and manages the petitioner's operations and requests that the Service consider letters in support of the petition from bank executives, the city economic development council, and Paul H. Shin, Washington State Senator.

The petitioner does not present a persuasive argument in rebuttal to the director's stated reasons for denial. As the record is presently constituted, the evidence does not support a finding that the beneficiary is currently employed and will continue to be employed in a primarily executive or managerial capacity.

The petitioner's appeal is comprised of information regarding how its business operations have expanded since the filing of the petition on October 14, 1999 and the business opportunities it expects to gain in the future. While these facts are noted, they are irrelevant to whether the beneficiary was qualified for immigrant visa classification as a multinational executive or manager at the time the petition was filed.

In the adjudication of an I-140 petition of this type, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). The Service must focus solely on the petitioner's operations and staffing levels as they existed on the date the petition was filed. Therefore, while the petitioner presents evidence of its expanded operations and staffing levels, these new facts cannot be considered on appeal. A determination on this appeal will be made based on whether the organizational structure, at the time the petition was filed, could have supported a primarily executive or managerial position. If the petitioner would like the Service to consider any increase in staff or additional duties of its employees, the petitioner should file a new I-140 petition so that the Service may fully consider this information.

The record reflects that at the time the petitioner filed the Form I-140, it claimed to employ three individuals. One individual was described as the vice president, who "has done a greater part of the purchasing on a commission basis during the last two years." The other individual was described as an interpreter/translator, who "was working on an as-needed basis." The petitioner described the beneficiary's job responsibilities as follows:

- ❖ Planning, coordinating, developing, and establishing policies and marketing strategies.
- ❖ Directing to obtain all government permits and licenses including [an] export license.
- ❖ Directing to analyze and evaluate United States meat products and business practices.
- ❖ Directing and supervising to implement the business plans and policies to process and export meat products.

- ❖ Providing consulting services to U.S. meat processing/manufacturing companies in relation with export promotion to Korea.
- ❖ Establishing and implementing policies and plans for staffing of the United States operation, including the number of employees and types of positions.
- ❖ Continuing to hold the executive position of Korean operation and providing [an] executive link between the Korean and United States operations.
- ❖ Performing any and all other executive duties.

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 beneficiary's job responsibilities indicate that he directs various activities. However, in order to direct a particular activity, such as obtaining government licenses, the beneficiary would need to supervise the performance of this activity by another individual who is either on the company payroll or employed on a contractual basis.

The record does not contain any evidence that the petitioner employs a sufficient staff through whom the beneficiary can direct the various activities that are assigned to him. The petitioner states that its vice president works only on commission and the other employer works only as an interpreter/translator on an as-needed basis. Therefore, the Service cannot find that the beneficiary directs the management of the organization. Rather, it appears that the beneficiary, himself, provides the services that are necessary for the petitioner to operate. Accordingly, the petitioner does not sufficiently establish that the proffered position involves primarily executive duties.

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 proffered position involves primarily managerial functions. While it appears that the beneficiary has the authority to hire and fire personnel, the petitioner did not present any evidence to establish that the beneficiary manages the organization, or a function of the organization. In addition, there is no evidence that the beneficiary supervises managerial, supervisory, or professional employees.

The size of a company, by itself, is not a determining factor in this petition, but the petitioner does maintain the burden of proving that it has the necessary staff to ensure that the beneficiary can devote the primary amount of his time to executing purely executive or managerial functions. The petitioner has failed to convince this office that the beneficiary merits this immigrant visa classification.

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.