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U.S. Department of Justice

Immigration and Naturalization Service

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

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

[Redacted]

File: [Redacted] Office: TEXAS SERVICE CENTER

Date: 15 MAR 2002

IN RE: Petitioner:
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]

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 Texas 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 Florida corporation that is engaged in providing travel-related services to German-speaking individuals. 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 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 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.

The director denied the petition because the petitioner did not submit job descriptions for all of its employees as requested, or specify the types of services that it allegedly contracted to outside companies. The director noted that the lack of evidence regarding these two issues led to the conclusion that the beneficiary would not be relieved from performing nonqualifying duties.

On appeal, counsel submits job descriptions for the petitioner's three employees who are allegedly subordinate to the beneficiary, as well as a list of the services that the petitioner contracts. Counsel states that the beneficiary is responsible for directing the operations of the petitioner, and that the beneficiary's daily

tasks are "divided between activities such as directing activities of the manager, determining staffing needs, directing and implementing the marketing activities and supervising the financial aspects of the company."

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 has not provided sufficient evidence of the beneficiary's actual job duties in order for the Service to determine whether the beneficiary primarily directs the management of the organization or a major component or function of the organization.

The petitioner indicated in the initial petition filing that the beneficiary's duties include:

- ❖ Directing the management of the US operations (50%)
- ❖ Directing the marketing efforts of the company (30%)
- ❖ Supervising the financial aspects of the company's operations (20%)

Here, the petitioner does not provide any detail about the job duties that the beneficiary must execute in order to direct the management of the petitioner or its marketing efforts. The petitioner merely presents a broad job description for the beneficiary that does not provide any insight into his daily activities. "Specifics are clearly an important indication of whether an applicant's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations." Fedin Bros. Co., Ltd. v. Sava, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989),

aff'd, 905 F. 2d 41 (2d. Cir. 1990).¹

The Service notes that an individual who works in an executive capacity may perform duties that would not generally be classified as executive-level tasks. However, the petitioner bears the burden of establishing that the beneficiary *primarily* executes executive duties and any non-executive duties are merely incidental to the position. In this case, the petitioner has not met its burden because the beneficiary's daily activities are unknown, as the petitioner has chosen to submit only a vague job description for the beneficiary. Thus, the Service cannot conclude that the beneficiary is working in an executive capacity as that term is defined in the regulation. (Emphasis added.)

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.

As stated in the previous section, the petitioner does not

¹ The court in Fedin Bros. Co., Ltd. v. Sava also noted that "[t]he actual duties themselves reveal the true nature of the employment." See id. at 1108.

explain, with any degree of detail, how the beneficiary manages the petitioner or a function of the petitioner. In IKEA US, Inc., v. U.S. Dept. of Justice I.N.S., 48 F. Supp. 2d 22 (D.D.C. 1999), the court upheld the Service's denial of a nonimmigrant L-1A petition because the petitioner failed to document the percentage of time the beneficiary devoted to managerial duties versus his non-managerial duties.

The petitioner submits evidence that it employs three individuals in addition to the beneficiary. One individual is employed as the office and public relations manager, one individual is employed as a part-time administrative assistant, and the third individual is employed as a part-time receptionist/language assistant. The petitioner also submits evidence that it has entered into contractor agreements with several entities.

None of the employees' job descriptions adequately establishes that the day-to-day non-managerial duties are executed by the individuals who are subordinate to the beneficiary, especially considering that two of the three employees work on a part-time basis. In addition, while the petitioner claims that the beneficiary supervises a subordinate manager, the petitioner describes the office and public relations manager's job as "oversee and manage [the] daily operations of [the] business," which is rather vague. Although the petitioner provides some specifics about the individual's job duties, the duties listed, which include soliciting service providers and responding to client needs, are not managerial-level functions. Therefore, the Service cannot conclude that the beneficiary supervises managerial, supervisory or professional employees.

Regarding the petitioner's claim that it contracts services that it provides to outside companies, the petitioner indicates that it has contractual agreements with a pool maintenance service, a household repair service, and three businesses that refer clients to the petitioner. The petitioner does not explain how its contracts for pool maintenance and household repairs are germane to its stipulated business of providing services to German-speaking individuals. The petitioner also does not explain how its contracts with companies that refer clients to the petitioner establish that the beneficiary works at a primarily managerial level. Accordingly, there is insufficient evidence that the beneficiary currently works and will continue to work primarily as a manager.

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.