



BH

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



File: EAC 00 161 52648 Office: VERMONT SERVICE CENTER Date: **MAY 03 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 F. Rosenberg*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director of the Vermont 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 New York corporation that promotes, exhibits and sells the beneficiary's art work. It seeks to employ the beneficiary as its president and, therefore, seeks to classify the beneficiary as a multinational executive or 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 the petitioner would employ the beneficiary in a primarily executive or managerial capacity.

On appeal, counsel submits a brief and additional evidence. Counsel asserts, in part, that the Serviced erred in finding that the beneficiary would not be assuming a primarily executive capacity with the petitioning entity's operations.

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 his denial letter, the director noted that the petitioner employed two individuals - the beneficiary (president) and another employee with a managerial title - who were both being petitioned for immigrant visas as multinational executives or managers. The director found that because the petitioner was in the business of promoting and selling the beneficiary's art work, the petitioner would not have sufficient work for two individuals at the managerial or executive level. The director also found that the petitioner's business operations were such that the beneficiary would be involved in "hands-on tasks of marketing and production."

On appeal, counsel states that the petitioner is in the business of "develop[ing] business opportunities for [the beneficiary's] work as one of the premiere commercial artist[s] in Japan and the world." Counsel states that in addition to creating works of art, the beneficiary provides strategic planning to the petitioner.

In support of his claim that the beneficiary functions in a primarily executive or managerial capacity, counsel submits several letters from individuals in the 3-D and animation industry. According to counsel, the beneficiary plans strategies to capitalize on the growing 3-D and animation market, as this market would require the beneficiary's artistic creativity.

Counsel does not present a persuasive argument on appeal that would cause a reversal of the director's decision to deny the petition. As the record is presently constituted, the evidence does not support a conclusion that the beneficiary would be employed by the petitioner in a primarily executive or managerial capacity.

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.

In a November 20, 2000 letter in response to the director's request for evidence, the petitioner outlined the beneficiary's job responsibilities. According to the petitioner, the beneficiary spent 40% of his time "identifying new services," 40% of his time performing "strategic planning for new market," and 20% of his time creating art and performing non-managerial tasks. The petitioner outlined the beneficiary's specific responsibilities as follows:

[The beneficiary] has responsibility for managing, operating and expanding Ten Production New York's business operations in the United States. In this capacity, [the beneficiary] supervises the day-to-day operations of the branch office, including exhibition planning, coordination, promotion and management, as well as market research relating to future exhibitions. He is responsible for supervising [and] arranging exhibitions and gallery shows, and compiling and analyzing information on such shows, in order to determine strategy concerning future Ten Production ventures in the United States. . . .

The beneficiary's job description does not persuade the Service that the beneficiary either directs the management of the organization or manages the organization as a primary job activity.

Here, the petitioner does not provide any detail about the actual job duties that the beneficiary would perform. Instead, the petitioner lists generalized job duties such as "identifying new services" and "strategic planning for new market" as the

beneficiary's main duties. However, the petitioner does not list or describe the types of duties that are associated with executing these rather broad job responsibilities. For example, the petitioner states that the beneficiary "supervises the day-to-day operations of the branch office, including exhibition planning, coordination, promotion and management, as well as market research relating to future exhibitions." In order to supervise these stipulated activities, the beneficiary must direct the execution of these tasks by others. The petitioner, however, does not explain who plans, coordinates and promotes the exhibitions, and who performs its market research. "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).<sup>1</sup>

An individual who works in an executive capacity may occasionally perform duties that would not generally be classified as executive or managerial level tasks. However, the petitioner bears the burden of establishing that the beneficiary primarily executes executive or managerial duties and any non-executive or non-managerial duties are merely incidental to the position. It is clear that the petitioner was organized as a corporation in order to promote and market the beneficiary's artistic creations in the field of animation. As the beneficiary's art work is essential to the survival of the petitioner, the beneficiary must, therefore, produce the product and/or service of the petitioner. 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 (BIA 1988).

On appeal, counsel submits letters from several individuals who work in the 3-D and animation industries in the United States. While each individual attests to the artistic vision and creativity of the beneficiary and considers the beneficiary's presence in the United States to be vital to the growth of the 3-D and animation industries in this country, none of the writers provides any evidence that the beneficiary works primarily in an executive or managerial capacity.

For the reasons stated above, there is insufficient evidence to conclude that the beneficiary's role as president would be to primarily manage the petitioner or a function of the petitioner, or direct the management of the petitioner. Accordingly, the

---

<sup>1</sup> 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.

beneficiary does not qualify for classification as a multinational executive or manager.

In visa petition proceedings, 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 sustained that burden.

**ORDER:** The appeal is dismissed.