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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: WAC 99 124 53589

Office: CALIFORNIA SERVICE CENTER

Date: MAY 03 2002

IN RE: Petitioner:
Beneficiary:



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. Rosevear
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the immigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a California corporation that is involved in the international computer development, consulting, marketing and trade industry. It seeks to employ the beneficiary as its vice president of marketing and trade 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 record did not show that the petitioner currently employs and will continue to employ the beneficiary in a primarily managerial capacity.

On appeal, the petitioner submits a statement.

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 made two conclusions about the petitioner's operations, which resulted in the denial of the petition. First, the director concluded that the beneficiary would be a co-supervisor, along with the president, of the company's eight employees and, therefore, would work primarily as a first-line supervisor. Second, the director concluded that the small-scale of the petitioner's operations made it "unreasonable to believe that the beneficiary, as the Vice President of Business Development, will not be involved with the day-to-day non-supervisory duties that are common place in the industry."

On appeal, the petitioner presents the following information in

rebuttal:

First, the petitioner states that the organizational chart upon which the director relied was misleading. According to the petitioner, it is the beneficiary who supervises eight subordinate employees, with the president supervising the beneficiary. The petitioner asserts that the president executes executive-level duties while the beneficiary manages its operations.

Second, the petitioner contends that the beneficiary supervises professional-level employees. According to the petitioner, the beneficiary manages two departments, each of which is headed by a departmental manager and staffed with professional computer/systems analysts. The petitioner states that it employs at least one individual in H-1B status as a programmer/analyst, and maintains that because H-1B status is granted to individuals in specialty occupations, then the beneficiary would, therefore, supervise professional employees.

Third, the petitioner contends that the director inappropriately looked at its gross sales and gross receipts and incorrectly determined that these factors indicated that the beneficiary is merely a first-line supervisor. The petitioner asserts that it is not a small company, as alleged by the director, and that the size of the company cannot be a determining factor.

Fourth and finally, the petitioner argues against the director's finding that the beneficiary is involved in the day-to-day non-supervisory duties of the petitioner's operations. According to the petitioner, such a conclusion by the director ignores the beneficiary's experience in business management and the descriptions of the staff's duties that were previously submitted into evidence. The petitioner stresses that the beneficiary manages the technical work of managerial and professional employees, and oversees the petitioner's daily operations.

Pursuant to 8 C.F.R. 204.5(j)(2):

Executive capacity means an assignment within an organization in which the employee 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.

Managerial capacity means an assignment within an organization in which the employee 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.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. Champion World, Inc. v. I.N.S., 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir.(Wash.)).

While the Service does not find that the beneficiary primarily executes executive-level responsibilities, there is sufficient evidence to conclude that the beneficiary functions primarily as a manager.

The petitioner establishes that the beneficiary manages its operations through subordinate managers and professional level employees who hold positions such as manager of software development, technology analyst, and programmer analyst. The description of the staff's daily responsibilities does not lead to a conclusion that the beneficiary, himself, performs the services or develops the products that comprise the petitioner's operations. Rather, the evidence indicates that the beneficiary exercises direction over the petitioner's daily operations. Accordingly, the beneficiary meets all required elements listed under the definition of managerial capacity and is, therefore, eligible for 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 met that burden.

ORDER: The appeal is sustained and the petition is approved.