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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: TEXAS 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

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 the import and export business. 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 (1) the foreign entity employed the beneficiary in an executive or managerial capacity for at least one year in the three years immediately preceding the filing of the petition, and (2) the petitioner would employ the beneficiary in a primarily executive or managerial capacity.

On appeal, counsel 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.

**I. BENEFICIARY'S ROLE WITH THE FOREIGN ENTITY**

One basis of the director's denial was the petitioner's unwillingness to submit a job description for the beneficiary's position with the foreign entity. The director noted that even though he requested a job description from the foreign entity, only counsel outlined the beneficiary's job responsibilities. The director found that the assertions of counsel do not constitute evidence and he, therefore, denied the petition on this basis.

On appeal, counsel does not specifically address the director's concerns. Therefore, the petitioner has not overcome this portion of the director's objections.

It is noted that 8 C.F.R. 204.5(j)(3)(i) states that a petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed outside of the United States in a qualifying managerial or executive capacity for a requisite period of time. In this case, an authorized official from either the petitioner or the foreign entity did not submit a statement regarding the beneficiary's job responsibilities with the foreign entity. Instead, counsel informed the Service about the beneficiary's job duties. As the assertions of counsel do not constitute evidence, and as the petitioner did not comply with the pertinent regulations, the Service cannot accept as credible evidence counsel's depiction of the beneficiary's job duties. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

## II. BENEFICIARY'S PROPOSED ROLE WITH THE PETITIONER

The director's denial of the petition on this additional ground was based upon evidence which indicated that the beneficiary would be performing marketing duties, rather than managing the performance of those duties by others. The director also noted that the petitioner's organizational structure did not indicate that it employed a sufficient staff to relieve the beneficiary from performing nonqualifying duties.

On appeal, counsel states that the beneficiary's job description includes duties that are primarily executive and managerial in nature and further contends that the size of the petitioner is not a determinative factor in whether an individual is working in a primarily executive or managerial capacity. Counsel maintains that there may have been a bias against the approval of the petition and urges the Service to reconsider the denial in light of the approval of other immigrant petitions.

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

8 C.F.R. 204.5(j)(5) states:

*Offer of employment.* No labor certification is required for this classification; however, the prospective employer in the United States must furnish a job offer in the form of a statement which indicates

that the alien is to be employed in the United States in a managerial or executive capacity. Such letter must clearly describe the duties to be performed by the alien.

In this particular case, the petitioner has not complied with the pertinent regulation. The petitioner has never submitted a letter that clearly describes the duties to be performed by the beneficiary. Instead, counsel described the beneficiary's proposed job duties with the U.S. entity. As previously stated, the assertions of counsel do not constitute evidence. Matter of Obaigbena, id.; Matter of Ramirez-Sanchez, id. As the petitioner has not submitted a job description for the beneficiary that clearly describes the duties that he will execute in behalf of the petitioner, there is no reasonable basis upon which to find that the proffered position fits the definition of managerial capacity or executive capacity as defined in the regulations.

Regarding counsel's accusations of bias against the petitioner, such an assertion is beyond the scope and authority of the Administrative Appeals Office. Counsel's suggestion that the denial of this petition is in error due to the approval of petitions in the past is noted. However, the Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v. INS, 2000 WL 282785 (E.D.La. 2000), aff'd, 248 F.3d 1139 (5<sup>th</sup> Cir. 2001), cert. denied, 122 S. Ct.51 (U.S. 2001).

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.