



BH

U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent identity information from being used for invasion of personal privacy

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



File: WAC 00 026 52788

Office: CALIFORNIA SERVICE CENTER

Date: MAY 13 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:

SELF-REPRESENTED

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a corporation incorporated in Nevada in 1996. The petitioner is engaged in project management and residential and commercial construction. It seeks to employ the beneficiary as its project manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), as a multinational executive or manager. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, the petitioner contends that the Service incorrectly identified the beneficiary as a first-line supervisor and that the beneficiary functions at a much higher level. The petitioner also provided an additional description of the beneficiary's duties.

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 language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in

the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

Title 8, Code of Federal Regulations, section 204.5(j)(3) states:

(i) Required evidence. 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:

(A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or

(B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;

(C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and

(D) The prospective United States employer has been doing business for at least one year.

The issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive 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.

The petitioner submitted a letter outlining the beneficiary's duties as follows:

He has obtained the land, re-zoned it, designed, built and is currently managing a shopping center . . .

A second venture involved the assembly, purchase, re-zoning, design and engineering of a very strategically located site in the Southeast Las Vegas area . . .

A third project being undertaken at present involves the development and managing of a major townhouse venture in West Las Vegas . . .

The petitioner also included its organizational chart showing the beneficiary as the chief operations manager of the petitioner. The chart also listed positions for office manager and support staff. The chart also included positions for contract and construction personnel for various phases from the beginning of a project to project completion.

The director requested additional evidence including a specific day-to-day description of the duties the beneficiary had performed. The director also requested a list of all the employees under the beneficiary's supervision as well as all of the petitioner's employees by name and job title. The director further requested the source of remuneration of all employees and whether the employees were on salary or were paid by commission.

In response, the petitioner provided an expanded description of the beneficiary's day-to-day duties as follows:

- all banking duties including depositing, money transfers, term deposits, project updates with bank officials
- monthly reporting to the Secretary, [sic] principals of the foreign company and the investors
- all site inspections and investigations of future sites
- all meetings and liaison with various City [sic] officials
- all meetings with consultants
- negotiating agreements and contracts with the various governmental agencies such as police, fire departments, environmental people, health departments, school districts etc.
- appearing before various city councils to defend or promote a [sic] various project
- meeting with the company accountant to keep all books and accounts up to date for the IRS and the investor
- liaison with the company attorney in all purchase and sale agreements, leases, city contracts etc.

The petitioner also noted that the beneficiary was vested with total authority to manage the operations of the company and was responsible for hiring and firing all sub-trades and consultants. The petitioner also stated that the beneficiary approved purchase requisitions, developed computer programs, determined the functions of other personnel in the field and leased and rented equipment and vehicles. The petitioner also indicated that all its employees were hired on a contract and term basis.

The director determined that the beneficiary was a first-line supervisor who supervised non-professional employees. The director concluded that the petitioner had not established that the beneficiary's duties had been or would be primarily executive or managerial in nature.

On appeal, the petitioner further expands upon the beneficiary's duties and states that the beneficiary is a purchasing agent, a leasing agent, a selling agent and is the main decision maker for all matters of concern between the architects, engineers, the county and the city. The petitioner states that the beneficiary is the chief executive assistant to the president. The petitioner further states that due to the type of foreign investment it relies upon to fund its various projects, the beneficiary must continue in this role in the United States or the petitioner will likely close its operations in the United States. The petitioner asserts that the beneficiary has been incorrectly identified as a first-line supervisor and that his function is at a level much higher than that description.

The petitioner's evidence is not persuasive. In examining the executive or managerial capacity of the beneficiary, the Service will look first to the petitioner's description of the job duties. See 8 C.F.R. 204.5(j)(5). In the initial petition, the petitioner submitted a description of projects the beneficiary purportedly managed. In response to the director's request for an additional description of the beneficiary's job duties, the petitioner provided a list of tasks that were more indicative of an individual providing services to the enterprise rather than managing the organization through the work of others. The petitioner's description of the beneficiary as a purchasing agent, a leasing agent and a selling agent only confirms that the beneficiary is providing services to the company rather than primarily managing the company through the work of others. 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, 604 (Comm. 1988).

In addition, the petitioner's statement that the petitioner employed personnel on a contract basis is not supported in the record. The various Internal Revenue Service (IRS) Forms that were submitted do not reflect salaries or contract expenses. Further, the petitioner did not provide copies of contracts or other agreements that support that other personnel have been hired even on a contract and term basis. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Based on the record, the beneficiary is the only employee of the petitioner. The two letters submitted by unrelated entities is insufficient to establish that the petitioner supervises or manages others on a permanent basis. Upon review, the petitioner

has not provided sufficient evidence to overcome the director's determination that the beneficiary is not acting in a managerial or executive capacity as defined by the Act.

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. Here, that burden has not been met.

ORDER: The appeal is dismissed.