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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: VERMONT 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

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DISCUSSION: The employment-based visa petition was originally approved by the Director, Vermont Service Center. Upon subsequent review, the director properly served the petitioner with a notice of intent to revoke the approval of the immigrant petition, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a corporation engaged in international trade, financing and real estate investment. It seeks classification of 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. Upon further review, the director determined that the petitioner had not established that the beneficiary had been or would be employed in an executive or managerial capacity and revoked the petition.

On appeal, the petitioner explains that it did not receive the notice of intent to revoke issued by the director and requests an opportunity to submit the required 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 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.

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 was incorporated in the State of New York in February 1996. It is a wholly-owned subsidiary of a Chinese corporation. The petitioner appears to employ five or six individuals in addition to the beneficiary.

The petitioner initially submitted a letter from its president listing the proposed responsibilities of the beneficiary as its trade manager. The responsibilities included the following:

1. Conduct market and product research and analysis, oversee the subsidiary's [petitioner's] market and products development plans and strategies, directing and coordinate managerial staff and our product supply systems, adjust and revise corporate goals in accordance with those [sic] research and analysis;

2. Review and decide on proposed contracts and negotiations in conjunction with subordinated manager-in-charge, negotiation and signing contracts for purchasing and exporting various of [sic] products, raw materials and technology and equipment from the U.S. to China;

3. Help the president to formulate corporate objectives and policies for attainment of objectives, determining and implementing the import and export policy, setting goal [sic] for the company;

4. Locate and coordinate with company's customers, provide good image of the company to the customers, promote sales to increase sales volume;

5. Supervising one assistant manager and supporting staff, setting up promotion plans, evaluating subordinate's work performance, exercising hire, fire and promotional authority;

The petitioner also included its organizational chart showing a president, a vice-president, a secretary and financial person, and the beneficiary in purported managerial positions. In addition, the chart reflected that a market development and purchasing employee reported to the vice-president and an office secretary and a customer relations employee reported to the secretary and

financial person. The organizational chart reflected that the beneficiary reported directly to the president and did not directly supervise any employees.

The petitioner further included copies of its Internal Revenue Service (IRS) Forms 941 for the period of March 31, 1997 to December 31, 1997. The IRS Form 941 for the quarter ending December 31, 1997 reflected that the petitioner paid salary to five individuals in that quarter.

As noted above, the director initially approved the petition, however upon further review of the submitted information issued a notice of intent to revoke the petition dated October 20, 2000. The notice of intent to revoke requested that any response to the notice of intent to revoke submitted by the petitioner include evidence that the beneficiary would be engaged in a primarily managerial or executive position with the United States company.

The director revoked the petition on February 6, 2001 after determining that the petitioner had not offered any response to the notice of intent to revoke and thus had not established the beneficiary would be engaged in a primarily managerial or executive position.

On appeal, the petitioner submits the INS Form I-290B explaining that it had not received the notice of intent to revoke nor the revocation letter. The petitioner indicates that it became aware of the revocation of the beneficiary's preference visa when the beneficiary presented a copy of the revocation letter to its president. The petitioner confirms that on or about February 16, 2001, after the director issued the notice of intent to revoke, it first provided its new address to the Vermont Service Center. The petitioner also submits photographs of a building undergoing construction and alleges that construction required that it temporarily move offices. The petitioner finally requests that it be allowed to submit the required evidence.

The petitioner has not submitted sufficient evidence with the petition nor the notice of appeal to overcome the director's decision to revoke the petition. The description of the beneficiary's duties and responsibilities is general in nature and does not describe in detail the beneficiary's duties on a day-to-day basis. The record is insufficient to demonstrate that the beneficiary manages the organization, or a department, subdivision, function, or component of the organization or directs the management of the organization or a major component or function of the organization

In addition, the record reveals that at the time of filing the petition, the petitioner did not have a staff sufficient to relieve the beneficiary from performing non-qualifying duties. The organizational chart of the petitioner reveals that the petitioner employs a president and two other individuals that

have position titles that are managerial in nature, leaving only three employees to actually conduct the day-to-day business of the enterprise. The record does not sufficiently demonstrate that the majority of the beneficiary's actual daily activities have been and will be managerial or executive in nature rather than primarily performing the services necessary to continue the operation of the company.

Further, the petitioner has provided inconsistent information in regard to the number of individuals it employs and in the reporting structure of the company. The petitioner indicates through its president that the beneficiary will supervise an assistant manager and supporting staff. Yet the organizational chart reflects that the beneficiary will report directly to the president of the company and has no employees under her supervision. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

The petitioner has not provided sufficient evidence to support a finding that the beneficiary has been or will be acting in a primarily managerial or executive capacity.

Section 205 of the Act, 8 U.S.C. 1155, states that "[t]he Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204 [of the Act]."

A notice of intent to revoke approval of a visa petition was properly served on the petitioner at its last known address. The notice of intent to revoke was properly issued for "good and sufficient cause" as the evidence of record at the time the notice was issued, warranted a denial of the visa petition based upon the petitioner's failure to meet its burden of proof. The decision to revoke will be sustained where the evidence on record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intent to revoke, would warrant such denial. Matter of Ho, supra.

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of a petition's approval, provided the director's revised opinion is supported by the record. Id. In the present case, the decision to revoke will be affirmed on the ground that the petitioner has not established that the beneficiary has been primarily employed in a managerial or executive position.



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, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.