

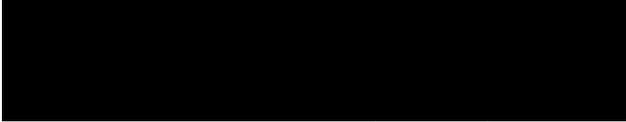


BH

U.S. Department of Justice  
Immigration and Naturalization Service

**identifying 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: WAC 00 022 51252 Office: CALIFORNIA SERVICE CENTER Date: **NOV 13 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:  
[Redacted]

**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 employment-based visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of California in 1991. It is engaged in the import and wholesale of furniture and accessories. It seeks to employ the beneficiary as its market 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 an executive or managerial capacity.

On appeal, the petitioner submits a brief. The petitioner asserts that the beneficiary is primarily fulfilling duties in a managerial and executive capacity. The petitioner also asserts that the beneficiary is not a first-line supervisor. The petitioner further asserts that the beneficiary has a "manager" under his supervision.

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

The issue in this proceeding is whether the beneficiary has been and will be primarily performing managerial or executive duties.

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 letter submitted with the initial petition, the petitioner indicated through its counsel that the beneficiary would be filling the position of marketing and sales manager. The petitioner provided through its counsel the following description of the beneficiary's job duties:

[The beneficiary] is responsible for coordinating [the petitioner's] marketing and sales operations, including contacting the existing and potential distributors and customers; supervising the sales representatives in the United States and Canada; attending promotional programs and responsible [sic] for maintaining healthy business relationships with the suppliers, and providing the suppliers with updated market information and customers' responses to their products.

The petitioner also through its counsel stated:

In sum, [the beneficiary] has autonomous control over, and exercises wide latitude and discretionary decision-making in, establishing the most advantageous courses of action for the successful management and direction of [the petitioners] marketing development activities.

The director requested a more detailed description of the beneficiary's duties for the petitioner. The director also requested the petitioner's organizational chart including the beneficiary's position on the chart and all the employees under the beneficiary's supervision. The director further requested a brief description of the job duties for the employees under the beneficiary's supervision.

In response to the director's request the petitioner provided a further description of the beneficiary's job duties as the sales and marketing manager that is repeated in the decision and will not be subsequently repeated here. The petitioner also stated that the beneficiary was authorized to sign the company checks, that the beneficiary directed and supervised the use of electronic data interchange, decided to authorize a customs broker, and decided to hire a salesman and an office secretary. The petitioner also provided a number of invoices from the petitioner's ultimate parent company signed by the beneficiary on behalf of the petitioner.

The petitioner provided its organizational chart depicting the beneficiary's position as directly under the vice-president. The organizational chart depicted a warehouse manager and four warehouse workers reporting directly to the beneficiary. The chart also depicted three sales personnel reporting directly to the beneficiary.

The petitioner also described the beneficiary's day-to-day duties as manager of the sales and marketing departments. The duties included directing the processing of purchase orders, arranging production of samples from customers, analyzing the market, approving and signing contracts and assigning tasks to employees. In addition, the petitioner indicated that beneficiary attended meetings with the president, vice-president, and other managers, made business calls to important customers, analyzed correspondence from China, analyzed sales contracts, directed the secretary, and responded to the parent company's orders.

The director determined that the petitioner's organizational chart indicated that the beneficiary was the sales and marketing manager directly over eight employees. The director also determined the eight employees were not considered professional employees and that the beneficiary functioned primarily as a first-line supervisor. The director further determined upon review of the record that the beneficiary's duties had not been and would not be primarily managerial or executive in nature.

On appeal, the petitioner asserts that the beneficiary has a "manager" under his supervision and is not a first-line supervisor. The petitioner asserts that the beneficiary is primarily fulfilling duties in a managerial and executive capacity.

Upon review, counsel's assertions are 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 broad position description that vaguely refers, in part, to duties such as "coordinating [the petitioner's] marketing and sales operations," "contacting the existing and potential distributors and customers," "supervising sales representatives," "attending promotional programs," and "providing suppliers with updated market information." The petitioner then stated that the beneficiary exercised wide latitude and discretionary decision-making in relation to the petitioner's marketing development activities. The petitioner's initial description is more indicative of an individual performing basic marketing tasks for 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, 604 (Comm. 1988). The petitioner's paraphrase of an element found in the criteria of

executive capacity does not aid in a further understanding of the beneficiary's daily duties. See Section 101(a)(44)(B)(iii). The petitioner's supervisory role appeared limited to supervising sales representatives in a first-line supervisory role. See Section 101(a)(44)(A)(iv).

The petitioner's response to the director's request for evidence while more detailed still is more indicative of an individual providing basic services to the company. The petitioner indicates that the beneficiary negotiates contracts, resolves differences between buyers and sellers, prepares market activity reports, coordinates sales distribution, advises dealers, distributors, and clients concerning sales and advertising techniques, assigns sales territories, analyzes sales statistics, reviews market analyses, develops sales campaigns, represents the company at trade associations, and analyzes and controls expenditures. The petitioner does not provide information on who in the petitioner's organization actually performs the marketing functions other than the beneficiary. Although the director specifically requested information on the duties of the beneficiary's subordinates, the petitioner chose not to provide this information. The petitioner's organizational chart depicts sales representatives and warehouse workers but does not depict any individuals who provide marketing services or the other services described above. The record indicates that it is the beneficiary who will primarily be promoting the corporation and identifying markets for the corporation and creating marketing strategy.

The beneficiary's authority to sign checks and his role as the corporate secretary does not make the beneficiary's position an executive or managerial one. Any appointed agent of the petitioner may be authorized to sign checks. The title of corporate secretary does not necessarily connote an executive or managerial role. The beneficiary's signature on the invoices or sales contracts confirms that the beneficiary is participating in basic sales activity essentially as a first-line supervisor over the sales representatives. Contrary to the petitioner's implied assertion, a sales representative position is not a professional position. The petitioner has not provided any information to conclude otherwise.

The petitioner's assertion on appeal that the warehouse manager forms an intermediate tier to the beneficiary's supervision of the warehouse workers is inconsistent with the organizational chart provided by the petitioner in response to the director's request for evidence. 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 title alone does not make the "warehouse manager" a manager as defined by statute and regulation. As noted above, the duties of the individuals involved in the petitioner's distribution network

have not been defined. 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).

Counsel's implication that the marketing department and the distribution network are essential functions of the petitioner does not contribute to a finding that the beneficiary is performing in a managerial or executive capacity. Based on the record, the beneficiary is primarily performing these functions rather than managing them.

The record contains insufficient evidence to demonstrate that the beneficiary's duties in the proposed position will be primarily managerial or executive in nature. The record does not demonstrate that the beneficiary will have managerial control and authority over a function, department, subdivision, or component of the company. Rather, the description of the duties to be performed by the beneficiary are more indicative of an individual primarily performing the basic operations of the petitioner. Further, the record does not sufficiently demonstrate that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties. The Service is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses an executive title. The petitioner has not established that the beneficiary will be employed in either a primarily managerial or executive capacity.

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.