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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



NOV 13 2002

File: EAC 01 114 50759 Office: VERMONT SERVICE CENTER Date:

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

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a corporation that claims to be engaged in new product development and technical exchange with its parent company. It seeks to employ the beneficiary as its customer support manager. Accordingly, 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. The director determined that the petitioner had not established that it had been doing business for at least one year prior to the filing of the petition.

On appeal, counsel for the petitioner asserts that the petitioner began conducting regular, systematic, and continuous provision of services since January 2000.

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.

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 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.

The issue in this proceeding is whether the petitioner has established that it has been doing business for at least one year prior to the filing of this petition.

8 C.F.R. 214.2(1)(1)(ii)(H) states:

*Doing Business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petition was filed on February 26, 2001. The petitioner was established in 1996 to provide sales and foundry services to the parent company. However, according to the letter submitted in support of the petition, the petitioner was dormant in the years 1998 and 1999. The petitioner was activated in January of 2000 when the petitioner's parent company wired initial capital of one million dollars to it. An additional one million dollars was transferred to the petitioner in August of 2000. The petitioner also submitted a worksheet for the NYS-45 Form, Quarterly Combined Withholding, Wage Reporting and U.S. Unemployment

Insurance Return for the first quarter of 2000. The worksheet revealed a total of ten employees hired sometime during the first quarter of 2000.

The director requested additional information noting that the information already provided by the petitioner indicated that its office was newly established.

In response, the petitioner provided a financial statement that revealed it had entered into a lease agreement for premises in New York in May of 2000.

The director determined that the petitioner had not established that it had been doing business for at least one year prior to the filing of the petition. The director relied on the lease agreement and the statements of the petitioner in making this determination.

On appeal, counsel for the petitioner asserts that the petitioner had been doing business for one year at the time of filing the petition. Counsel submits an interim month-to-month lease agreement beginning on February 23, 2000. Counsel notes that an interim month-to-month lease was necessary because the May 1, 2000 lease space was undergoing construction. Counsel also submits invoices for the order and purchase of office equipment dated February 24 and February 25, 2000. Counsel also notes that the petitioner was to support a joint chip technologies project that was announced January 27, 2000. Counsel concludes that these documents demonstrate that the petitioner was conducting regular, systematic, and continuous provision of services since early January 2000, at least a month before the petition was filed on February 26, 2001.

Counsel's assertions are not persuasive. The petitioner has provided evidence of a lease with a start date of February 23, 2000 and the purchase of office equipment on February 24 and February 25, 2000. The petitioner has not provided evidence of when the office equipment was delivered. This documentation does not demonstrate that the petitioner was engaged in the regular provision of services prior to February 26, 2000. It simply demonstrates that the petitioner is in the process of opening an office. The petitioner has not provided evidence that it hired employees one year prior to filing the petition. The worksheet for the NYS-45 Form submitted initially with the petition does not reveal when the ten employees were hired during the first quarter. Based on the lack of evidence on this issue and the confirmation of the petitioner that it lacked an office and office equipment immediately prior to February 26, 2000, the Service will not assume that the employees were hired prior to February 26, 2000. The petitioner has only demonstrated that it was in the process of opening an office prior to February 26, 2000 in order to support its parent company's business. It has not demonstrated that it was actually conducting regular, systematic, and continuous

business prior to that date.

Beyond the decision of the director, the petitioner has not established that the beneficiary will be engaged in a managerial or executive position with the petitioner. The petitioner has noted that the beneficiary supervised three engineers at the time the petition was filed and was supervising five engineers when it responded to the director's request for additional evidence. However, the petitioner also stated that the beneficiary duties included:

Plan and direct formulation of advanced technology development (such as 0.13um or below) and pilot production line jointly with engineers of [the parent company's] customers in the U.S. and [the parent company's] R&D team and manufacturing staff in Taiwan. Monitor and supervise [the petitioner's] customer support function for LOGIC DRAM, eDRAM, SRAM and FPGA product lines. Direct and coordinate customer support activities concerning advanced technology development, preparation of specifications, product testing, technology productions ramp up, and product design review for compliance with engineering principles, company standards, customer contract requirements, and related specifications. Coordinate between customers and [the parent company] concerning technical developments, scheduling, and resolving engineering design and test problems. Direct integration of technical activities and products. Evaluate and approve design changes, specifications, and drawing release. Manage customer's technology/documents transferring into [the parent company] and the conversion of customer's pilot/engineering instruction into pilot production line.

The Service is unable to determine from this general job description whether the beneficiary is performing managerial or executive duties with respect to the duties described or is actually performing the activities. The Service is also unable to determine from the general description whether the beneficiary is primarily engaged in these duties, or is primarily engaged in supervising engineers or whether these duties are comprised of a mix of supervision and performing the duties. The actual daily duties have not been described with sufficient detail to demonstrate that the beneficiary is primarily engaged in managerial or executive duties.

Although the director stated his satisfaction with the description of the beneficiary's duties for the overseas company, we note that the petitioner has not provided a breakdown of the beneficiary's time spent as a first-line supervisor of professional engineers and providing other services to the petitioner's parent company. We question the sufficiency of the

petitioner's description in this regard as well.

For these additional reasons the petition may not be approved.

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.