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U.S. Department of Justice  
Immigration and Naturalization Service

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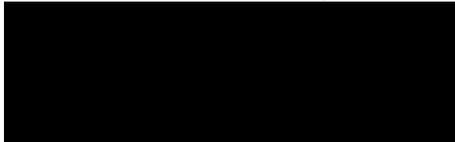
Date: **NOV 14 2002**

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:



**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 limited liability company organized in the State of Arizona in January of 1997. It is engaged in the operation of a dry cleaning business. It seeks to employ the beneficiary as its owner and manager. Accordingly, it 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 employed in a primarily executive or managerial capacity by the foreign entity for one-year prior to his entry into the United States as a non-immigrant.

On appeal, counsel for the petitioner asserts that the petitioner has submitted ample evidence demonstrating the beneficiary's employment in a managerial or executive capacity for one year outside of the United States. Counsel asserts that the director's decision is an abuse of discretion and is contrary to the evidence in the record.

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.

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.

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 was employed by the entity abroad for at least one year in a 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 initially stated through its counsel that the beneficiary was the company accountant and majority shareholder of a distribution company in England. Counsel also stated that the beneficiary purchased the petitioner in January of 1997 and "at that time he was still employed as an accountant for an art business in England." The petitioner submitted the beneficiary's resume that described his position from 1994 to present as the

company accountant for an art consultant's company. The beneficiary's duties for the art company were described as bookkeeping, coding invoices, data entry, preparing quarterly management accounts, running monthly payroll for seventeen staff as well as other accounting duties.

The director requested further detail regarding the beneficiary's position for the foreign entity and his specific duties. The director requested the foreign entity's organizational chart identifying the beneficiary's position on the chart and all employees under his supervision.

In response, the petitioner provided the foreign entity's organizational chart depicting the beneficiary as the executive manager. The chart revealed a supervisor directly under the beneficiary's position and an employee under the supervisor's position. The chart also listed four part-time employees under the employee position. The petitioner also provided a description of the beneficiary's duties as including the following:

- (30%) total financial responsibility including day to day cashflow management,
- (25%) overseeing full book-keeping and financial responsibility, reporting to the accountant/auditor for statutory accounts preparation and filing with Inland Revenue,
- (15%) managing staff and related matters,
- (20%) overseeing stock control and liaison with suppliers,
- (10%) overseeing ad-hoc queries/problems and smoothing family matters.

The director determined that the beneficiary was principally an owner of the claimed foreign entity and that the beneficiary's duties for the organization were not primarily managerial or executive in nature.

On a motion made to the director to reconsider her decision, the beneficiary stated that his father initially managed the claimed foreign entity. The beneficiary further stated that he became involved in the family business upon the illness of his father in 1989 and subsequent passing of his father in 1990. The beneficiary also indicated that he executed a loan for the business, undertook renovations for the business, managed the supervisor, and was responsible for "bookkeeping, banking, cashflow management, business and legal correspondence, conducting staff interviews, reviewing staff performance, setting weekly staff rotas and schedules, payroll and ultimately for staff dismissals." The director dismissed the motion and affirmed the previous decision.

On appeal, counsel re-iterates the beneficiary's duties for the claimed foreign entity as provided by the beneficiary. Counsel

asserts that the petitioner has shown that the beneficiary was employed outside the United States for at least one year in a managerial and/or executive capacity on behalf of the United Kingdom based business.

It is noted that the petitioner does not clarify whether the beneficiary claimed to be engaged in managerial duties under section 101(a)(44)(A) of the Act, or executive duties under section 101(a)(44)(B) of the Act. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. A petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager if the beneficiary is representing he or she is both an executive and a manager.

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). The petitioner has provided a confusing description of the beneficiary's employment prior to entering the United States on a nonimmigrant visa. The petitioner and its counsel have indicated that the beneficiary was employed up until entry into the United States as an accountant for an art consultant company. The petitioner, its counsel, and the beneficiary have also indicated that the beneficiary assisted his family in running a small, family-owned business. 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).

In addition to the confusing information on where the beneficiary was primarily employed, the beneficiary's duties for the claimed foreign entity are more indicative of an individual providing basic financial and administrative services for the claimed foreign entity rather than performing executive or managerial duties for the claimed foreign entity. 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). Moreover, the beneficiary's signing of a loan agreement and undertaking renovations do not indicate the beneficiary is directing the management of the company or managing the company. Rather, having the authority to bind the company simply recognizes that the beneficiary is acting as an agent for the company. Furthermore, neither counsel nor the petitioner has provided independent supporting documentation that the beneficiary managed a subordinate staff of professional, supervisory, or managerial employees. 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).

The record contains insufficient consistent evidence to demonstrate that the beneficiary was employed in a primarily managerial or executive capacity or that the beneficiary's duties in the position with the claimed foreign entity were primarily managerial or executive in nature. The description of the duties performed by the beneficiary does not sufficiently demonstrate that the beneficiary had managerial control and authority over a function, department, subdivision, or component of the claimed foreign entity. Further, the record does not sufficiently demonstrate that the beneficiary managed a subordinate staff of professional, managerial, or supervisory personnel who relieved 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 or managerial title. The petitioner has not established that the beneficiary was employed in either a primarily managerial or executive capacity for the foreign entity.

Contrary to the director's statement that the petitioner has shown that the beneficiary has been employed in a managerial or executive position in the United States, the record does not support such a finding. The beneficiary provided a background history of his work with the dry cleaning business that is owned by the United States limited liability company. The beneficiary stated that he came to the United States in 1998 and learned the dry cleaning business and began to manage and run the plant. He also notes that he attended a dry cleaning seminar and is studying retailing and hotel construction/management. In response to the director's request for more evidence on this issue, a letter was submitted stating that the beneficiary undertakes a very hands on approach in the management and operation of the day-to-day business. The letter provided the following information regarding the beneficiary's day-to-day duties for the petitioner's dry cleaning business:

He undertakes a pivotal roll [sic] as a cleaner/spotter in the production process of the business. This is the heart of any dry cleaning operation. He also has an important roll [sic] in customer relations helping to build and generate the goodwill of the business. He is also responsible for customer fittings and alteration, ie, pinning up of garments for customer alterations. Other duties includes full administration, cash flow management and book-keeping of the business. He is directly responsible for the day to day operation of staff allocation and plant/equipment maintenance and ensuring inventory and supplies.

As noted above, an individual who primarily provides services to the petitioning enterprise is not an individual employed in a

primarily managerial or executive capacity. Matter of Church Scientology International, supra. The petitioner has not demonstrated that the beneficiary has been or will be employed in a primarily managerial or executive capacity for the petitioner. For this additional reason the petition may not be approved.

Beyond the decision of the director, the petitioner has not established a qualifying relationship with the overseas entity. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities, in that the petitioning company is the same employer or an affiliate or subsidiary of the overseas company.

The nature of the claimed foreign enterprise's ownership presents an obstacle to the petition's approval. As a matter of law, there is no prospective United States employer that could be considered the "same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas." 8 C.F.R. 204.5(j)(3)(i)(C). The claimed foreign entity is apparently a family business. The petitioner has not submitted definitive evidence on the ownership of the foreign business. It does not appear to be incorporated. It does not appear to be a limited liability company. A letter submitted in response to the director's request for evidence indicates that "the foreign business trades as a partnership as does the US business with the same two partners." This statement is not sufficient to establish the ownership and control of the foreign entity. Furthermore, the beneficiary throughout the record refers to his purchase of and setting up of the petitioner. The petitioner has been organized as a limited liability company. The initial operating agreement indicates that the beneficiary and one other individual are the members of the limited liability company and each hold a 50 percent interest in the enterprise. The petitioner also submits a statement that the beneficiary owns, manages, and controls a 60 percent interest in the enterprise. This is affirmed by the limited liability company's other member. However, the record contains no independent documentation demonstrating the capitalization of the petitioning enterprise by the claimed overseas entity and contains no documentation of a transfer of interest taking place. The record contains no independent documentation that the claimed foreign entity, and not the beneficiary, purchased the limited liability company.

The petitioner has not provided sufficient evidence to establish the ownership and control of the claimed foreign entity. The petitioner has provided confusing documentation regarding its ownership and control. The lack of documentation regarding purported transfers raises questions regarding the legitimacy of the purported limited liability company. As the petition will not be approved for the above stated reasons, this issue is not examined further.

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.