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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 14 2002

File: [Redacted] Office: TEXAS 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:
[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, Texas Service Center. The Associate Commissioner for Examinations dismissed a subsequent appeal on June 11, 2001. The matter is now before the Associate Commissioner for Examinations on a motion to reopen and reconsider. The motion will be granted. The decision of the Associate Commissioner will be affirmed.

The petitioner is a Louisiana corporation doing business as [REDACTED] in Shreveport, Louisiana. It seeks to employ the beneficiary as its finance 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 the beneficiary had been or would be employed in a primarily executive or managerial capacity. The Associate Commissioner affirmed the director's decision on appeal.

On motion, counsel for the petitioner submits additional information that was purportedly inadvertently omitted in the previous proceedings. Counsel states that the qualifying entity owns another hotel, the [REDACTED] in addition to the [REDACTED]. Counsel submits an amended job description for the beneficiary and a revised organizational chart. Counsel asserts that the petitioner intends that the beneficiary work as "Corporate Finance Manager" for the two hotel properties allegedly owned by the petitioner.

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.

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

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 in its initial letter to support the beneficiary's classification provided the following job description for the beneficiary's position:

[The beneficiary] will be responsible for all aspects of its financial accounting. In this connection, [the beneficiary] will be responsible for the accounting department of Ramada Inn. He will be designing and developing systems for efficient management of resources. He will train and supervise staff. He is to ensure timely reports are generated and submitted to the regulatory agencies. Duties will also be to liaise and negotiate with customers, banks, and suppliers, ect [sic]. He will be in charge of coordinating activities with other departments and carrying out internal audit procedures. Finally, [the beneficiary] will be responsible for the month end financial statements with variance analysis and year-end financial statements with schedules for audit.

The petitioner also submitted an unaudited balance sheet dated August 31, 1998 and its 1997 Internal Revenue Service Form 1120, U.S. Corporation Income Tax Return.

The director requested evidence of the petitioner's staffing in the United States and position titles, duties and educational levels of the accounting department.

In response, the petitioner provided the following job duties for the beneficiary:

- 1) Corporate Planning & Decision Making 3 Hrs
- 2) Quantitative & Qualitative Evaluation 4 Hrs
of all Departments
- 3) Supervision of Finance Departments 20 Hrs
In generating financial statements &
management information reports.
Hiring & Training of staff.
Designing & Implementation of
Accounting Information Systems.
Producing statements. Month
end/year end financial Submission of
statutory reports.
- 4) Forecasting, Planning & Evaluation of 8 Hrs
Operating Performance. Variance & Ratio
Analysis.
- 5) Cash Flow Management & Budgetary Control 5 Hrs



The petitioner also stated that the front desk supervisor, night auditor, accounting supervisor, accounts receivable assistant, and accounts payable assistant, all individuals with high school diplomas, would report directly to the beneficiary. The petitioner also provided an organizational chart depicting a general manager with three unnamed equally subordinate managers with position titles of accounting manager, marketing manager, and human resources manager.

The director determined that based on the evidence in the record, the Service could not find that the beneficiary had been or would be employed primarily in a qualifying managerial or executive capacity.

On appeal, counsel stated that the petitioner was providing additional detail that was inadvertently left out of the response to the director's request for additional evidence. Counsel asserts that the additional detail shows the beneficiary's actual job duties and concludes that the beneficiary should award the beneficiary immigrant status. The job description submitted for the beneficiary is as follows:

- He will be instrumental in establishing the following policies,
- Income/expense recognition policy
- Depreciation policy
- Inventory valuation policy
- Credit management policy
- Employee recruitment policy.
- Procurement Policy.
- Financing and Investing policy.

[The beneficiary] will be exercising wide latitude in discretionary decision making in designing, implementing and operation of systems for the finance department.

Detailed as follows,

- Procurement of equipment, soft ware [sic] etc.
- Hiring and firing of staff.
- Training of staff.
- Promotion and leave authorization of staff.
- Approving incentive schemes for staff.
- Generating timely reports.
- Complying with all statutory obligations of the organization.
- Supervision of staff who are experienced to perform the function of financial and cost accounting on a day to day basis.

The petitioner concluded by stating that the beneficiary would

manage five employees with collectively 48 years of accounting experience all being professionals in their own functions, would manage the internal audit function and would basically direct and manage the finance department.

The Associate Commissioner determined that the petitioner had not distinguished between managerial and non-managerial functions performed by the beneficiary. The Associate Commissioner also determined that the petitioner had not demonstrated that the beneficiary supervised employees at the managerial, supervisory, or professional level. The Associate Commissioner further determined that the previous approval of the L-1A nonimmigrant classification did not mandate the approval of the immigrant petition.

On motion, counsel again states that the petitioner is providing information inadvertently omitted from the previous proceedings. Counsel provides yet another amended job description for the beneficiary and states that the beneficiary is the corporate finance manager for the Ramada Inn and the Pelican Inn and has been since December of 2000. The job description provided now indicates that the beneficiary's primary role is to manage the treasury, budgetary control, assets, and internal audit functions for the two inns. The beneficiary purportedly manages staff. Counsel provides a new organizational chart depicting a president, the corporate finance manager as the beneficiary's position, and a director of inn operations. The corporate finance manager is shown to supervise nine employees, apparently comprised of individuals from both the [REDACTED] and the [REDACTED]. Counsel asserts that the information now provided allows for the reasonable conclusion that the beneficiary will be employed primarily as a manager.

Counsel's assertion is not persuasive. The petitioner has submitted three different versions of the beneficiary's job duties. Each version contains different language but still does not convey an understanding of the beneficiary's daily duties. The initial description submitted indicated that the beneficiary would be responsible for the accounting department of the Ramada Inn and would also negotiate with suppliers and banks and would also coordinate activities with other departments. This describes the position of a first-line supervisor of non-professional, non-managerial, and non-supervisory employees and a position of an employee who is also performing some basic operational tasks for the petitioner. 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. See Section 101(a)(44)(A)(iv) of the Act. 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 second description submitted confirmed that the beneficiary would spend the majority of his time supervising the accounting department of the Ramada Inn as a first-line supervisor of non-professional, non-managerial, and non-supervisory employees as well as performing forecasting duties and cash flow and budgetary tasks for the petitioner. Again this description does not demonstrate that the beneficiary would be employed in a primarily managerial or a primarily executive position.

The third description submitted on appeal also does not contribute to an understanding of how the beneficiary's position would be a managerial or executive position. Instead the description borrowed phrases from the statutory definition for "executive capacity" and provided examples of the beneficiary performing services for the petitioner as a first-line supervisor and an employee. First, 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. Second, the beneficiary's duties described as establishing policies for the accounting department and performing other first-line supervisory functions as well as procuring equipment and generating reports are not indicative of an individual primarily employed in a managerial capacity. Contrary to counsel's assertion, the Associate Commissioner determined that the positions supervised by the beneficiary were not professional positions. Counsel on motion has not submitted any relevant information to overcome the Associate Commissioner's decision on this issue.

On motion, the petitioner submits yet a fourth description of the beneficiary's duties and for the first time alleges that it also owns and controls another inn. The petitioner also submits a revised organizational chart depicting the beneficiary as purportedly a second-line supervisor over a supervisor, a comptroller and an audit manager. 8 C.F.R. 103.2(b)(12) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." Further, where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition is adjudicated, evidence submitted on appeal will not be considered for any purpose, and the appeal will be adjudicated based on the record of proceedings before the director. Matter of Soriano, 19 I&N Dec. 764 (BIA 1988). Finally, the petitioner states that the beneficiary has held this position since December of 2000. The petition was filed in January of 2000. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. Matter of Katigbak, 14 I&N Dec.

45,49 (Comm. 1971). The petitioner has not provided evidence that the beneficiary has been or will be employed in either a managerial or executive capacity.

Of further note, the record shows that [REDACTED] owns the [REDACTED]. It is unclear if this enterprise is the same or is related to the petitioner, [REDACTED]. 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 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 this case the record contains insufficient evidence to demonstrate that the beneficiary has been employed in a primarily managerial or executive capacity or that the beneficiary's duties in the proposed position will be primarily managerial or executive in nature. The descriptions of the beneficiary's job duties are general in nature and are more indicative of an individual performing the basic operations of the company. The description of the duties to be performed by the beneficiary does not demonstrate that the beneficiary will have managerial control and authority over a function, department, subdivision or component of the company. Further, the record does not sufficiently demonstrate that the beneficiary has managed 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 or managerial title. The petitioner has not established that the beneficiary has been employed in either a primarily managerial or executive capacity.

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, the petitioner has not sustained that burden.

ORDER: The decision of the Associate Commissioner dated June 11, 2001 is affirmed.