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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: TEXAS SERVICE CENTER Date: NOV 19 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:
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

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

The petitioner is a company organized in the State of Florida that is engaged in the international marketing business. It seeks to employ the beneficiary as its international executive. Accordingly, it seeks 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 failed to submit evidence requested by the director including information regarding the beneficiary's duties abroad and for the United States entity. The director determined that the petitioner had not met its burden in establishing eligibility for the petition filed.

On appeal, the petitioner asserts that it had provided documentary evidence demonstrating that the foreign entity and the United States entity were both doing business. The petitioner also asserts it had provided three contracts that list the duties performed for each of the contracts.

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.

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 first 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 stated that:

[the beneficiary] is special knowledge [sic] of [redacted] to the Subsidiary company, [redacted] who [sic] establish foreign trade missions concerns to meet with identified potential customer in the United States of North America.

The petitioner also submitted a document stating that the beneficiary was an international executive of marketing. The petitioner also submitted several untranslated and partially translated documents. The petitioner provided its Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return for 1999. The Form 1120 revealed \$91,290 in gross receipts, compensation of \$10,000 paid to the beneficiary as an officer, \$18,000 paid in salaries, and a net taxable income of \$3,039.

The director requested additional evidence to show that the petitioner was currently conducting business in the United States. The director also requested evidence of all positions held by the beneficiary in the United States and a foreign country and all the duties the beneficiary performed for each company.

In response, the petitioner provided copies of three contracts indicating that the petitioner would represent and distribute certain ceramic product lines in the United States. The petitioner also provided copies of invoices.

The director determined that the petitioner had failed to submit the requested information and concluded that the petitioner had failed to sustain its burden of proof in demonstrating eligibility for the petition filed.

On appeal, the petitioner referenced previous classifications of the beneficiary as a non-immigrant and stated that the beneficiary would "handle" the United States entity. The petitioner also stated that the beneficiary had specialized knowledge of design and could help customers choose the right products. The petitioner also referenced the contracts submitted in response to the director's request for evidence and stated that the contracts delineated the positions held by the beneficiary in the United States and the foreign country.

The petitioner's statements on appeal and the documents submitted do not demonstrate that the beneficiary has been or will be

employed in an executive or managerial capacity by the petitioner. In addition, the information provided does not establish that the beneficiary was employed abroad by a qualifying foreign entity in a managerial or executive capacity. 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 failed to provide any evidence that would support a finding that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The lack of information may be due to the poor and sometimes non-existent translations of various documents. However, it is the petitioner's responsibility to provide accurate and comprehensible translations for the Service's review. See 8 C.F.R. 103.2(b)(3).

The petitioner's representation that the beneficiary has specialized knowledge does not establish that the beneficiary qualifies as a multinational executive or manager as defined above. The petitioner's reference to previous approvals of the beneficiary as a non-immigrant with specialized knowledge (L-1B) does not contribute to a finding of eligibility for an employment-based immigrant as a multinational executive or manager. First, the criteria for approval of a non-immigrant classification for an individual with specialized knowledge does not correspond to the criteria for approval of an immigrant classification based upon employment as a multinational executive or manager. Second, as established in numerous decisions, the Service is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See, e.g., Sussex Enqq. Ltd. v. Montgomery, 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988); Matter of Church Scientology Int'l., 19 I&N Dec. 593, 597 (BIA 1988).

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 record does not contain a comprehensible description of the beneficiary's job duties and does not describe the actual day-to-day duties of the beneficiary. The petitioner has not demonstrated that the duties that have been or will be performed by the beneficiary include 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 or will be employed in either a primarily managerial or executive capacity.

Beyond the decision of the director, the petitioner has not provided adequate documentation regarding its qualifying relationship with the claimed foreign parent company. 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 record is deficient in this regard.

Also beyond the decision of the director, the petitioner has not established its ability to pay the beneficiary the proffered wage of \$18,000 per year. See 8 C.F.R. 204.5(g) (2).

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.