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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:  Office: VERMONT SERVICE CENTER Date: OCT 04 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. Weimann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was initially approved by the Director, Vermont Service Center. Upon subsequent review, the director properly issued a notice of intent to revoke, and ultimately revoked the approval of the petition. The petitioner appealed the decision to the Associate Commissioner for Examinations and the Associate Commissioner dismissed the appeal. The matter is now before the Associate Commissioner on a motion to reconsider. The motion will be granted and the previous decision will be affirmed.

The petitioner is a corporation engaged in the business of international trade. It seeks to employ the beneficiary as its vice-president and supervisor of planning and exports. 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 not established that the beneficiary had been or would be employed in an executive or managerial position. The Associate Commissioner affirmed the director's decision on appeal.

On motion for reconsideration, counsel for the petitioner asserts that the Service erred in revoking the approval of the petition and submits a brief in support of the motion.

8 C.F.R. 103.5(a)(2) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

On motion, counsel asserts the following:

1. The Service failed to show good and sufficient cause for the revocation of the Beneficiary's petition.
2. The Service did not consider all the duties assigned to the employees managed by the beneficiary in determining that the employees were non-professionals.
3. The Service inferred that the lack of sales representatives indicated that the beneficiary directly engaged in sales for the company.
4. The Service failed to consider all the duties assigned to the beneficiary in determining that the beneficiary did not meet the requirements of a manager under the Act.
5. The Service incorrectly identified the company-owned home in New Jersey as the petitioner's place of

business.

6. The Service abused its discretion in revoking the I-140 approval on a conclusive statement unsupported by the facts.

Counsel has set out six grounds as the basis for the motion to reconsider but has not adequately supported his assertions by precedent decisions. Counsel has not provided reasoning utilized in precedent decisions that demonstrate that the Service incorrectly applied the law or Service policy. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec.533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 BIA 1980). However, the Associate Commissioner will address each ground and clarify its reasoning for the initial dismissal.¹

Counsel's assertion that the Service failed to provide good and sufficient cause in revoking an approved I-140 petition is without merit and is not adequately supported by pertinent precedent decisions. Section 205 of the Act, 8 U.S.C. 1155, states that "[t]he Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204 [of the Act]."

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of a petition's approval, provided the director's revised opinion is supported by the record. Matter of Ho, 19 I&N Dec. 582 (BIA 1988). In the present case, the decision to revoke will be affirmed because the petitioner did not provide sufficient evidence that the beneficiary would be primarily employed in a managerial or executive position. Counsel asserts that the position descriptions for the beneficiary's position and the descriptions of the other employee's positions were specific. However, the record does not support this assertion.

Counsel cites Tongatapu Woodcraft Hawaii, Ltd. v Feldman, 736 F.2d 1305, 1308 (9th Cir. 1984) (reviewing revocation of a petition approved for qualified immigrants who are capable of performing specified skilled or unskilled labor) that notes that the Service retains the burden of producing substantial evidence supporting its determination. However, the cited case addresses the scrutiny of a revocation by the federal courts and in the case at hand the Service did substantially support its revocation determination. The director upon review, determined that the record submitted by the petitioner provided only a recitation of the elements contained in the definition of managerial and executive capacity found in the Act and not a comprehensive

¹ Also in regard to the decision to revoke and subsequent appeal we note that the appeal of the decision to revoke was not timely filed. See 8 C.F.R. 205.2(d).

description of the beneficiary's purported level of executive authority. The director also found that the petitioner did not provide evidence of employees who performed the majority of the non-managerial and non-executive duties. The director upon review of the record could not find that the record supported approval of a visa petition. The notice of intent to revoke was properly issued for "good and sufficient cause" as the evidence of record at the time the notice was issued, warranted a denial of the visa petition based upon the petitioner's failure to meet its burden of proof. The decision to revoke will be sustained where the evidence on record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intent to revoke, would warrant such denial. Id.

Counsel's assertion that the Service did not consider all the duties of the employees managed by the beneficiary in determining their duties were not professional is without merit and is not adequately supported by pertinent precedent decisions. Counsel references the purchase manager and the engineer and states that both of these positions are professional positions. However, the description of the purchase manager's job duties is more indicative of an individual engaged in selling the petitioner's product. The purchase manager targets vendors, serves as chief negotiator and drafts purchase contracts and reports to the president regarding these activities. As noted in the previous decision of the Associate Commissioner, the claim that the manager is executing and carrying out business objectives is vague and does not convey an understanding of the purchase manager's activities for this designated ten hours per week. We also note that the purchase manager reports to the president of the petitioner not the beneficiary. Although we agree with counsel that the title of "engineer" might connote a professional person, we disagree that the engineer's job duties comprehensively demonstrate that the petitioner's "engineer" is employed in a primarily professional position. We also note that the "engineer" was paid only \$5,600 in 1998 and \$4,800 for the first six months of 1999. There is no further detail on the engineer's employment and whether it was part-time or full-time. We also again note that the engineer reports to the president of the company and not the beneficiary. The Service will not assume that supervision of the engineer is a primary responsibility of the beneficiary. Counsel has failed to supply pertinent precedent decisions that are contrary to the Associate Commissioner's conclusion.

Counsel's assertions that the Service's inference that the beneficiary is directly participating in sales duties and that the Service did not consider all the duties assigned to the beneficiary are also without merit and not supported by pertinent precedent decisions. The petitioner's description of the beneficiary's job duties is vague. The petitioner's broadly cast description of "assisting and reporting to the president" does not provide an understanding of the beneficiary's duties. Contrary to

counsel's assumption that the beneficiary's oversight of allocation of financial resources and reporting on these activities is managerial in nature, such duties are more indicative of an individual performing basic financial tasks for the company. Likewise, the beneficiary's duty of approving export contracts and credit terms is more indicative of an employee involved with the basic financial transactions of the company. 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 description of the beneficiary as supervising and delegating assignments to four employees is contrary to the other employee's job descriptions (two employees report directly to the president and two to the vice-president). 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, supra. Without a complete, consistent description of the beneficiary's job duties as they directly relate to the petitioner's business, it is not possible to determine that the beneficiary is acting in a managerial capacity. Whether the beneficiary participates in sales activities (she is involved in some manner with export contracts) or is otherwise performing the basic operations of the petitioner, the petitioner did not establish that the beneficiary was working for the petitioner in a managerial capacity. Counsel has failed to supply pertinent precedent decisions to the contrary of this conclusion.

Counsel's assertion that the Service's speculation regarding the company-owned home is without merit. The Associate Commissioner only noted this for the record and did not base the dismissal on the location of the petitioner's office.²

Counsel's assertion that the Service abused its discretion is without merit and is not supported by pertinent precedent decisions. Based on the record, there is 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 vague and fail to describe the actual day-to-day duties of the beneficiary. In addition, a portion of the position description serves to merely paraphrase the statutory definitions of managerial and executive capacity. The description of the duties to be performed by the beneficiary does not demonstrate that the

² We note that the petitioner's address on file is for a suite in the World Trade Center. However, due to the tragic events of September 11, 2001, we are aware that the petitioner no longer maintains an office at that site. The record currently does not contain a new address.



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 her 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. Counsel has failed to support his assertions with pertinent precedent decisions that are contrary to these conclusions.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The previous decision of the Associate Commissioner is affirmed.