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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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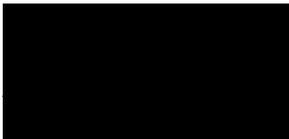


File: [Redacted] Office: TEXAS SERVICE CENTER Date: 04 SEP 2002

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:



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 Texas corporation established in December of 1998. The petitioner is engaged in the management of a retail store. It seeks to employ the beneficiary as its president and, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153 (b)(1)(C).

The director denied the petition because the petitioner failed to establish that the beneficiary was employed by the foreign entity in a managerial or executive capacity, and that the beneficiary is currently and will continue to be employed in a managerial or executive capacity for the United States entity.

On appeal, counsel for the petitioner submits a letter and additional documentation. Counsel asserts that the beneficiary supervised seven employees with the petitioner's affiliate in Pakistan and that the beneficiary's duties were substantially similar to the duties described in 8 C.F.R. Section 204.5(j). Counsel also asserts that the beneficiary supervises four employees in the United States, and that his activities will be substantially similar to the activities described in 8 C.F.R. Section 204.5(j).

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 first issue to be examined is whether the beneficiary was employed by the foreign entity in a managerial position for at

least one year in the three years immediately preceding his entry into the United States in L-1A nonimmigrant status.

The director found that the beneficiary's duties were described in broad and general terms. The petitioner submitted a description for the beneficiary as the managing director of the foreign entity that vaguely refers, in part, to duties such as "locating suppliers; negotiating with such suppliers; reviewing market conditions," and "supervising subordinate employees." The description further alluded to such duties as "reviewing and analyzing data," and "establishing and implementing policies to manage and achieve marketing goals; overseeing marketing campaigns developed by subordinate managers; reviewing and approving budgets prepared by controller and chartered accountants; and directing management of the company." The petitioner also noted that the beneficiary supervised four employees in his position with the foreign entity.

In the response to the request for additional evidence on this issue, the petitioner repeated the same general description and added an estimate of the amount of time the beneficiary spent on each vaguely described element. The petitioner also noted that the beneficiary supervised three employees while employed with the foreign entity.

On appeal, the petitioner does not further describe the beneficiary's duties for the foreign entity. Counsel for the petitioner simply asserts that the beneficiary supervised seven employees of the foreign entity and that his duties are substantially similar to the duties described in the pertinent section of the Act. Counsel also submits an employee's registration certificate issued by the government of Pakistan dated January 2001 indicating that the foreign entity in this case employs eight individuals including the beneficiary.

Counsel's assertion that the beneficiary's duties for the foreign entity were substantially similar to the definitions found in the Act is not persuasive. 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). Furthermore, the employee's registration certificate provided by counsel does not provide any insight into the beneficiary's duties for the foreign entity. Counsel's assertion that the beneficiary supervised seven employees for the foreign entity is also inconsistent with prior statements of the petitioner. We note that the prior statements of the petitioner are also inconsistent on the subject of the employees supervised by the beneficiary. 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). Neither counsel nor the petitioner

has provided sufficient evidence to overcome the decision of the director on this issue.

The next issue to be examined is the nature of the beneficiary's job with the United States entity. In denying the petition, the director found that the beneficiary was not a manager or executive because the description of the beneficiary's duties was broad and did not convey an understanding of his duties on a daily basis. The director also concluded that with the petitioner's limited number of employees and limited evidence in the record, the Service could not reasonably assume that the beneficiary was primarily performing managerial or executive duties.

On appeal, counsel for the petitioner does not specify how the director's reasoning on this issue was flawed. He merely states that the beneficiary will be supervising four employees in the United States and asserts that the four employees do nothing but relieve the beneficiary from performing the day-to-day activities of the company. As noted above, assertions of counsel do not constitute evidence. Matter of Obaigbena, supra; Matter of Ramirez-Sanchez, supra. Furthermore, the petitioner has not provided sufficient supporting evidence to establish the nature of its employees' daily activities. 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 description of the beneficiary's job duties for the United States enterprise again is vague and general in nature. No concrete description is provided to explain what the beneficiary will do in the day-to-day execution of his position. As noted by the director, duties described as overseeing the preparation of reports and marketing campaigns, reviewing and analyzing sales data, establishing and implementing policies to achieve marketing goals, reviewing financial and expense reports and budgets and managing the company are without adequate context to convey an understanding of the beneficiary's daily duties. It is not possible for the Service to determine from these vague statements whether the beneficiary is performing managerial or executive duties with respect to these activities or whether the beneficiary is actually performing the activities.

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 for the United States entity will be primarily managerial or executive in nature. The descriptions of the beneficiary's job duties are vague and fail to comprehensively describe the actual day-to-day duties of the beneficiary. 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 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, that burden has not been met.

ORDER: The appeal is dismissed.