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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: WAC 99 210 51405 Office: CALIFORNIA SERVICE CENTER Date: SEP 23 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:  
[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, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the state of California and is engaged in the automotive and food and beverage business. 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 a need for another permanent full-time executive or manager for the United States company.

On appeal, counsel for the petitioner asserts that whether there was a need for another permanent full-time manager is not relevant. Counsel further asserts that the beneficiary is the manager, president, and general manager of 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.

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.

The petitioner is a company organized in the state of California that states it is 80 percent owned by a foreign limited liability company. The petitioner claims it is doing business as Express Gas & Mart. The petitioner submitted a statement with its petition indicating that the petitioner had been active since its incorporation because it had taken over an already established business. The petitioner initially requested that the beneficiary be allowed to transfer to the United States in an L-1A capacity. The L-1A classification was approved in May of 1999. The petitioner then submitted this employment-based petition in July of 1999 requesting that the beneficiary be approved as a multinational manager 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. 8 C.F.R. 204.5(j)(5).

It is noted that the petitioner does not clearly specify whether the beneficiary claims 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 rely on partial sections of the two statutory definitions.

The issue in this proceeding is whether the petitioner provided sufficient evidence to establish the beneficiary will serve the

petitioner as an executive or manager.

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 provided a brief position description of the beneficiary's duties for the petitioner as follows:

[The beneficiary] has full responsibility for and is in charge of all aspects of our operations (we are open 16 hours a day, seven days a week) and employees. The latter include the undersigned (Day Shift) Manager (baccalaureate degree), the second shift Manager, the weekend Manager (Master's degree), and all of the subordinate employees involved in provision of the gas/oil, repair/maintenance and food/beverage services.

[The beneficiary] continues to develop and monitor systems and procedures to make sure that they are consistently and uniformly followed during the three shifts. He has complete responsibility for personnel decisions (recruitment, hiring, assignment, promotion, salary review and discharge) of employees at both the managerial and clerk level. [The beneficiary] handles all relations with our suppliers and vendors and our banks, attorneys, and accountants, and directs the activities of all our contractors and other outside professional and non-professional services.

The petitioner also provided the first page of its 1998 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return.

The director requested additional evidence to show the petitioner's managerial hierarchy and staffing levels, including an organizational chart. The director also requested that the petitioner provide signed and certified copies of its Form 1120 and relating schedules for the year 1999. The director further requested that the petitioner provide its lease agreement.

In response, the petitioner submitted its organizational chart, several business licenses and a partial lease agreement between two unrelated entities for the gasoline station and "mini-mart" located at 2951 High Street in Oakland, California.

The petitioner also submitted its 1999 IRS Form 1120. The petitioner's IRS Form 1120 on Schedule E indicated that the beneficiary devoted 50 percent of his time to the petitioner.

The director determined based on the record before her, that the beneficiary was only devoting 50 percent of his time to the petitioner, that it appeared that the beneficiary's brothers were handling the business known as Express Gas & Food Mart and that it also appeared the beneficiary was managing the petitioner's parent company's business. The director concluded that it was not reasonable to believe that the beneficiary was serving in a full-time position for the petitioner and that the petitioner had not established that there was a need for another permanent, full-time

executive or manager for the United States company.

On appeal, counsel for the petitioner explains that the beneficiary's brothers have significantly decreased their responsibilities at the petitioner's business. Counsel notes that the director considered several documents that were dated prior to the beneficiary's arrival in the United States in determining that the beneficiary's brothers were still handling the business. Counsel also notes that the beneficiary did not arrive in the United States to begin his responsibilities with the petitioner until May of 1999. Counsel explains that the petitioner's 1999 IRS Form 1120 delineating the time the beneficiary devoted to the petitioner was a reflection of the beneficiary's full-time employment with the petitioner for half of the 1999 tax year. Counsel concludes by asserting that the totality of the evidence demonstrates that the beneficiary always was, is, and will, in fact, be serving in a full-time position for the United States company as a manager.

Upon review, counsel's assertion is 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). In the initial petition, the petitioner submitted a broad position description that vaguely refers, in part, to duties such as having "full responsibility for and [being] in charge of all aspects of our operations" and "develop[ing] and monitor[ing] systems and procedures to make sure that they are consistently and uniformly followed," and "handle[ing] all relations with our suppliers and vendors and our banks, attorneys, and accountants, and directs the activities of all our contractors and other outside professional and non-professional services." The job duties described by the petitioner are vague and too general to convey an understanding of exactly what the beneficiary will be doing on a daily basis. The Service is unable to determine from these general 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 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. The description of the duties to be performed by the beneficiary in the proposed position 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.

Beyond the decision of the director, the petitioner has not established that the petitioner actually owns and controls the business where the beneficiary is employed. See 8 C.F.R. 204.5(j)(2). The petitioner submitted a copy of an offer to transfer the business known as Express Gas and Mart (the beneficiary's place of employment in the United States) and an acceptance of that offer by the petitioner. This agreement noted that the transferors of the business would execute and deliver such instruments of transfer as might be required to fully perform the transferor's obligations. The agreement was dated June of 1998. The petitioner also provided a copy of an assignment of lease to it for the premises located at 2591 High Street, Oakland, California (the beneficiary's place of employment) dated May 1, 2000, almost a year after this petition was filed. The assignment of lease includes a provision that the assignment is conditioned upon the approval of the landlord. The signatures of the beneficiary's two brothers as assignors and the petitioner as assignee are the only signatures on the assignment. There is no record that the landlord ever approved a transfer of the business to the petitioner. Based on the information contained in the record, the petitioner did not own or control the business where the beneficiary was employed at the time this petition was filed. As such, the petitioner has not established that the prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation by which the beneficiary was employed overseas. As the appeal is dismissed for the reason stated above, this issue is not examined further.

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.