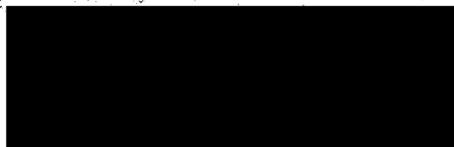


BH

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC 01 090 51121 Office: VERMONT SERVICE CENTER Date: APR 08 2003

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

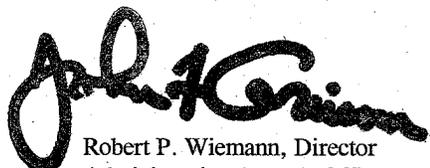
PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner claims to be a New York corporation. It is engaged in the import and wholesale of leather goods. It seeks to employ the beneficiary as its assistant general manager. Accordingly, the petitioner endeavors 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 would be employed in a primarily executive or managerial capacity.

On appeal, the petitioner asserts that the director erred in reviewing the evidence and that the beneficiary is employed in a managerial position in the company.

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.

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).

The issue in this proceeding is whether the beneficiary will perform primarily managerial or executive duties for the petitioner.

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 initially stated that the beneficiary had the following responsibilities for the company:

[The beneficiary] is managing the organization as its Assistant General Manager. He supervises and controls essential functions of the branch. He has the authority to hire or fire the staff under his control. He has the discretion over day to day [sic] operations of the activity and functions [sic] for which he has the authority. He plans, organize, [sic] direct [sic] and controls the branch. He is looking after the Imports from Pakistan of the Leather Jackets, Leather Gloves & Garments, meets the customers, books the orders, advise [sic] the head office about the order booked and terms and conditions settled. He can purchase or sell upto [sic] \$200,000.00 of Leather Jackets & Garments, with his discretionary powers and above that any amount with the consultation of General Manager and approval from Head office in Pakistan. He can enter into business agreements with any customer or client. He also takes care of the quality control of the imported goods and make [sic] Spot decisions on behalf of the parent firm too. [sic]

In response to subsequent requests for details regarding the beneficiary's duties, the petitioner provided the same job description. The petitioner also provided a chart of its organizational structure. The petitioner indicated that the beneficiary as assistant general manager reported to the general manager. The chart also depicted a secretary, an accountant (also described as an import clerk), and a warehouse supervisor reporting to the beneficiary. An office attendant who looked after the cleaning and guarded the office reported to the secretary. The petitioner also submitted its New York Form NYS-45, Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return for the first quarter of 2001. The NYS-45 Form revealed wages paid to five employees. The employee identified as the warehouse supervisor was not depicted on the NYS-45 Form for the first quarter of 2001.

The petitioner also provided brief job descriptions for its employees. The general manager was described as in charge of the organization, dealing with policy matters, entering into business deals, booking orders, meeting customers, attending important

events, and meeting with the head office in Pakistan. The import clerk and accountant's responsibilities included placing import orders, opening letters of credit, bank documentation covering imports, and custom clearance. The office secretary was described as responsible for office administration. The warehouse supervisor's duties included stocking and storage of merchandise and maintenance of inventory and stock.

The petitioner also provided its Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return for the year 2000. The IRS Form 1120 revealed gross receipts in the amount of \$338,559, compensation paid to officers in the amount of \$19,068, salaries paid in the amount of \$45,411, and total net income in the amount of \$4,610.

The director noted that the petitioner had not provided any evidence that it employed salespersons and concluded that it appeared the beneficiary would be primarily engaged in the performance of non-qualifying duties. The director also determined that the petitioner had not provided sufficient evidence to establish that the beneficiary's position with the petitioner was managerial or executive other than in position title.

On appeal, the beneficiary apparently on behalf of the petitioner stated that he had provided all the information requested. The beneficiary reiterated that all of his duties were managerial and executive. The beneficiary stated that he was in charge of operating the bank accounts and had a staff working under him and had handled the import and local business of the petitioner during the period under review.

The petitioner (and beneficiary's) assertions are not persuasive. In examining the executive or managerial capacity of the beneficiary, the Bureau will look first to the petitioner's job description. See 8 C.F.R. § 204.5(j)(5). The petitioner provided a broad position description for the beneficiary's duties stating that the beneficiary met with customers, booked orders, purchased and sold goods, and entered into business agreements with customers and clients. These duties are indicative of an individual performing the operational tasks of the petitioner in order to keep it in business. 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 remaining portion of the position description simply re-stated the definition of managerial capacity. See 101(a)(44)(A) of the Act. The petitioner has not provided sufficient evidence to establish that the beneficiary was primarily performing managerial or executive tasks for the petitioner. 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).

In addition, as noted by the director, the petitioner's job descriptions for its other employees do not encompass sales duties. Moreover the beneficiary's IRS Form 1040, Schedule C-EZ, Net Profit From Business (Sole proprietorship) for 1999 indicates the beneficiary is a salesperson. The same form for the year 2000 indicates that the beneficiary works on a commission basis. These documents reinforce the director's conclusion that the beneficiary is primarily engaged in performing the sales function for the petitioner.

The petitioner has not provided evidence to overcome the director's determination on this issue. The record as it stands contains insufficient information to demonstrate that the beneficiary has been employed in a primarily managerial or executive capacity or that the beneficiary's duties will be primarily managerial or executive in nature. The petitioner has not provided sufficient evidence to conclude that a majority of the beneficiary's actual duties relate to operational or policy management, and not to the supervision of lower level employees, performance of the duties of another type of position, or other involvement in the operational activities of the company. 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 presented confusing information regarding its qualifying relationship with the overseas entity. The petitioner indicates that the overseas entity is a four-person partnership and that the beneficiary is one of the partners. The petitioner does not provide any evidence of its incorporation other than two stock certificates issued jointly to the overseas entity and several individuals. The petitioner's IRS Form 1120 for the years 1998, 1999, and 2000 all indicate that the petitioner's general manager owns 100 percent of the petitioner. 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). The petitioner has not established that it has a qualifying relationship with the beneficiary's overseas employer. For this additional reason the petition may not be approved.

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.