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

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



APR 08 2003

File: WAC 01 262 63870 Office: CALIFORNIA SERVICE CENTER Date:

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: [Redacted]

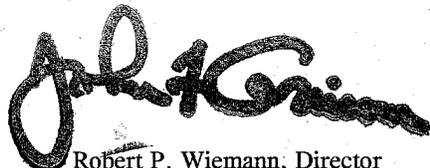
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INSTRUCTIONS:  
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 preference visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner was incorporated in 1996 in the State of California and is claimed to be a wholly-owned subsidiary [REDACTED] located in Japan. The petitioner is engaged in the business of procuring apparel and sporting goods products to be exported to the parent company. It seeks to employ the beneficiary as its 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 has not established that the beneficiary would be employed in a managerial or executive capacity.

On appeal, counsel submits a brief asserting that the beneficiary acts as both a personnel and function manager.

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

which 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 issue in this proceeding is whether the beneficiary has been and will be performing managerial or executive duties.

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.

In the initial filing, the petitioner provided a lengthy description of the beneficiary's duties in the United States. The petitioner also provided an organizational chart which indicates that the beneficiary directly supervises a purchasing/export administrator and a retail sales manager. The chart further indicates that the sales manager supervises three sales people.

On December 27, 2001 the director instructed the petitioner to submit further evidence to establish that the beneficiary's role with the U.S. petitioner is primarily that of an executive or manager. Among the requested evidence was a list of the beneficiary's subordinates, their titles and position descriptions. The petitioner was also asked to indicate the percentage of time the beneficiary spends performing each of the listed duties.

In response, the petitioner provided a list of responsibilities identical to the one originally provided with the initial filing. The following is claimed to be the comprehensive list of the beneficiary's responsibilities:

1. Managed the general administration and operations for the company including all purchasing, import/export and retail departments. Establishes management procedures . . . . . Develops procedures for management review . . . . . Manages resource planning activities and approves changes in management, information network systems, budgetary limitations and organizational procedures. Defines authority levels . . . . . Prepares plans for new commitments, reviews work in progress and resolves problems. Establishes industrial relations policies . . . . . [The beneficiary] spends 25% of his time performing these activities.
2. Organizes short and long term cost control, purchasing and export sales objectives . . . . . Develops key strategies to increase the company's base-business volume and income gains. Prepares risk/benefit comparisons and analyze their impact . . . . . Makes funding decisions . . . . . Utilizes working funds medium long term resource development and internal project financing. Prepares regular and special budget reports . . . . . Examines instruments and opinions prepared by outside legal and financial counsel . . . . . [The beneficiary] spends 20% of his time performing these activity [sic].
3. Acts as management liaison with purchasing teams at the parent company to develop comprehensive purchasing

- strategies . . . . Directs research studies . . . . .  
Analyzes transfer pricing rules . . . . . Reviews price  
fluctuations and yen/dollar changes . . . . . [The  
beneficiary] spends 20% of his time performing this  
activity.
4. Manages procedures for selection of vendors and pricing  
. . . . . Establishes procedures for inspection of  
received goods . . . . . Prepares reporting systems  
. . . . . Reviews cost and comparative reports . . . . .  
Evaluates contract performance by vendors . . . . . [The  
beneficiary] spends 5% of his time performing this  
activity.
5. Attends government and industry meetings and reviews  
information from periodicals and other sources . . . . .  
Reviews applicable federal requirements, restrictions,  
and agency regulations . . . . . [The beneficiary] spends  
5% of his time performing this activity.
6. Directs and coordinates non-merchandising  
responsibilities . . . . . Reviews activity reports  
outlining income, expenses and earning to provide funding  
for retail operations and maximizing returns on  
investments. Determines areas where administrative cost  
reductions can be effected and makes changes in programs  
and operations. Approves budget requirements and make  
[sic] decisions on capital adjustments . . . . . [The  
beneficiary] spends 5% of his time performing this  
activity.
7. Reviews operating statements and sales records . . . . .  
Negotiates and recommends approval or rejection of  
contractual purchasing agreements. Participates in  
discussions with vendors to discuss product marketability  
requirements. Coordinates introduction of  
marketing/sales systems for new products. Analyzes  
market trends, volume potential, price schedules and  
discount rates . . . . . Develops product simplification  
programs . . . . . [The beneficiary] spends 10% of his  
time performing this activity.
8. Directs protective and constructive administrative audits  
. . . . . Reviews special management studies . . . . .  
Establishes records management procedures . . . . . [The  
beneficiary] spends 5% of his time performing this  
activity.
9. Establishes community and regional public relations  
programs that provide government, industry and community  
groups with economic, marketing and retail sales

information. Promotes efforts to increase economic growth and employment stability in local communities. [The beneficiary] spends 5% of his time performing this activity.

The director denied the petition, concluding that the beneficiary would be acting as a first-line supervisor rather than as a manager or executive. The director noted that based on the nature and size of the organization, the petitioner does not have a reasonable need to employ someone in a primarily managerial or executive capacity.

On appeal, counsel asserts that the beneficiary supervises personnel and manages a function; therefore, he qualifies under the statutory definition of "manager." Counsel emphasizes the beneficiary's "specialized knowledge of company policies, standards and procedures" and his management experience. However, the beneficiary's past experience and knowledge, while making him potentially useful to the petitioning organization, does not establish that the beneficiary fits the statutory definition of "manager." As previously emphasized by the director, the petitioner must establish that the beneficiary's duties are primarily managerial.

In the instant case, the petitioner indicates that the beneficiary's duties include managing personnel, directing research studies, and reviewing reports. However, there is no clear indication in the record as to who actually carries out these functions. The petitioner has indicated, by means of an organizational chart, that the beneficiary's only immediate subordinates consist of one sales manager and a purchasing/export administrator. Although specifically requested to do so, the petitioner has not provided descriptions of either of these positions. Therefore, it is impossible to establish that either of these employees is professional, managerial or supervisory. Furthermore, the 2001 W-2 wage and tax statements of the petitioner's employees indicate that the petitioner paid its purchasing/export administrator \$5,417.24. Such a low figure suggests that this individual was not employed by the petitioner on a full-time basis. The same is true of the petitioner's entire sales staff, given that the highest paid sales person earned only \$1,300 in 2001. Thus, while the petitioner did not provide a job description for its sales manager, the fact that the petitioning organization does not employ any member of its sales staff on a full-time basis suggests that the sales manager and the beneficiary are involved in selling the petitioner's product. It is noted that 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).

While the beneficiary's job description indicates that he has a high degree of discretionary authority, the summary of the beneficiary's duties does not include a description of any subordinate positions which would perform the essential functions of the petitioner's business or the beneficiary's duties. Upon review, it is determined that the director was correct in concluding that the description of the beneficiary's job duties lead the Bureau to conclude that the beneficiary is performing as a professional or "staff officer," rather than as a manager or executive. In short, the record does not support the claim that the beneficiary manages a professional or managerial staff of individuals who relieve him from having to perform nonqualifying duties. Simply 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 record contains insufficient evidence to demonstrate that the beneficiary has been employed in a primarily managerial or executive capacity. The Bureau is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title. The petitioner has not established that the beneficiary has been or will be employed in 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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.

