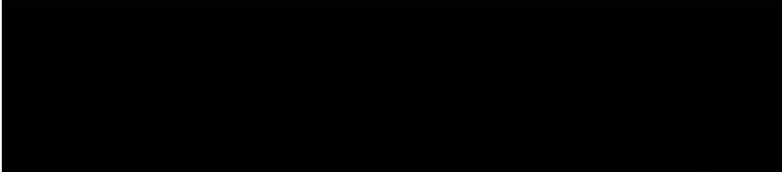


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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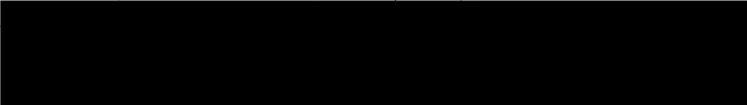
ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC 01 030 52631 Office: CALIFORNIA SERVICE CENTER

Date: APR 08 2003

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)

ON BEHALF OF PETITIONER:



PUBLIC COPY

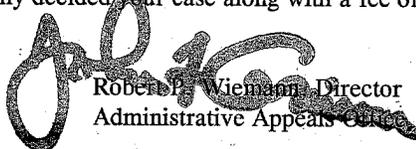
INSTRUCTIONS:

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 which originally decided your case along with a fee of \$110 as required under § 8 C.F.R. 103.7.


Robert J. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a veterinary clinic, was established in the year 2000 in the State of Hawaii and is claimed to be a subsidiary of [REDACTED] located in Canada. It seeks to employ the beneficiary as its chief executive officer. 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 had been or will be employed in a managerial or executive capacity.

On appeal, counsel disputes the director's findings and submits a brief and additional evidence in support thereof.

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 described the beneficiary's duties abroad as follows:

[REDACTED] has led the negotiations for lease contracts of commercial properties, obtained and negotiated construction contracts for commercial buildings, formed and maintained management contracts, participated in building and grounds maintenance, arranged the acquisition and disbursement for real properties, conducted evaluations and feasibility studies for acquisition of business interests abroad and negotiated sales and purchase agreements for business interests.

On January 26, 2001 the Service issued a notice requesting that the petitioner submit additional evidence. The petitioner was instructed, in part, to provide the Service with a detailed description of the beneficiary's duties, both abroad and in the United States. The director specifically requested that the list of duties include a breakdown of the percentage of time spent on each duty.

In response, the petitioner provided the beneficiary's resume containing the following list of his past and proposed duties:

Past job duties:

- Led the negotiations for lease contracts of commercial properties
- Obtained and negotiated construction contracts for commercial buildings
- Formed and maintained management contracts
- Participated in building and grounds maintenance
- Arranged the acquisition and disbursement of real properties
- Prepared evaluation and feasibility proposals in regards to various financial investment vehicles
- Conducted evaluations and feasibility studies for acquisition of business interests abroad
- Negotiation of sales and purchase agreements of business interests

- Negotiated the purchase of Maui Veterinary Clinic Treasurer on the Board of Directors

Job duties in the United States:

- Responsible for all administrative duties
- Acquisition and disbursement of information regarding the future development of real properties
- Responsible for the continued expansion and development of the Maui Veterinary Clinic
- Functioning practice manager
- Chief of Staff and lead veterinarian
- Practicing veterinary medicine including the diagnosis and practice of internal medicine, performing both soft tissue and orthopedic surgical procedures, dentistry, and the collection and interpretation of other diagnostic materials.

It is noted that the petitioner failed to comply with the director's request for a percentage breakdown of time spent performing each duty.

The director denied the petition, concluding that the beneficiary was performing many of the petitioner's daily functions and had the role of a first-line supervisor rather than a manager or executive.

On appeal, counsel asserted that the director's decision was erroneous and has since submitted a brief in support of the appeal. In the brief counsel claims that the beneficiary was the treasurer of the parent entity and states that this executive office involves "management and control of the company's real estate holdings and the growth of the company through acquisition of new assets." Counsel asserts that the beneficiary is an executive of a function not staff, and claims that the petitioner is similar to other a small organizations which require their executives to "perform the work that produces the goods and services because of small support staffs." In a supporting letter, the beneficiary admits that he spends, on average, about 35 to 40 hours per week practicing veterinary medicine for Hawaii Research and Development Group, and that he spends and additional 15 to 20 hours per week "performing administrative and managerial duties" for the parent and subsidiary organizations.

Counsel emphasizes the beneficiary's discretionary authority over personnel matters and the direction of the petitioning organization. However, discretionary authority alone does not establish that the duties performed are primarily executive or

managerial. Managing a small business does not necessarily establish eligibility for classification as a multinational executive in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. In examining the executive or managerial capacity of the beneficiary, the Bureau will look first to the petitioner's description of the job duties. See 8 C.F.R. § 204.5(j)(5). Although the beneficiary has some of the discretionary authority associated with managers and executives, he does not *primarily* function as a manager or executive. Instead, as counsel and the beneficiary himself admit, the beneficiary is required to perform the majority of the petitioner's veterinary services. 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). Moreover, the petitioner's list of employees indicates that the petitioner employs only one veterinarian, other than the beneficiary, and that this individual works only 10 hours per week leaving the beneficiary to perform a majority of the petitioner's veterinary services.

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. As such, the petition cannot 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.