

BH

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

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536



File: WAC 02 041 51092 Office: CALIFORNIA SERVICE CENTER

Date: APR 10 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:



*identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy*

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, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition remanded for further action and consideration.

The petitioner is a corporation organized in Hawaii in May 1982. It is engaged in operating a hotel. It seeks to employ the beneficiary as its vice-president. 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 managerial or executive capacity for the petitioner.

On appeal, counsel for the petitioner asserts that the record shows the beneficiary has been and will be employed in an executive and managerial capacity.

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 be employed in an executive or managerial capacity 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 provided an ETA Form 750, Application for Alien Employment Certification indicating the beneficiary would generally oversee hotel operations including international marketing and supervise a general manager. The petitioner also stated that the hotel was operated on an independent basis by an outside entity. The petitioner stated that the beneficiary would "exercise discretionary authority over the financial operations of U.S. company," and that, since "a significant amount of U.S. Company's operations is comprised of reviewing and approving the budget and financial operations of the hotel, [the beneficiary's] position is an important position." The petitioner indicated that the beneficiary had been in this position since August 1999.

The director requested further evidence to demonstrate that the beneficiary's position was an executive or managerial position. The director specifically requested the petitioner's organizational chart, identifying the beneficiary's position in the organizational hierarchy and identifying all the employees under the beneficiary's supervision.

In response, the petitioner indicated that the beneficiary was responsible for supervising the hotel's general manager. The petitioner's organizational chart depicted the beneficiary as supervising the general manager who, in turn, supervised 13 hotel staff. The positions subordinate to the general manager's position included a front office manager, a front office assistant manager, an executive housekeeper, clerks, room cleaners, and maintenance workers.

The director determined from the description of the beneficiary's job duties that the beneficiary did not qualify as an executive. The director also determined that the beneficiary did not qualify as a manager because he did not manage other managers or professional employees.

Counsel asserts that the beneficiary directs the management of the organization because the beneficiary oversees the general manager who, in turn, supervises other managerial employees. Counsel asserts that the beneficiary establishes the goals and policies of the organization because, as stated by the petitioner, the beneficiary makes the major financial, budgetary, and executive decisions of the company. Counsel asserts that the beneficiary exercises wide latitude in discretionary decision-making because the beneficiary makes all final decisions regarding personnel, budgeting and financial decisions. Counsel asserts that the beneficiary receives only general supervision

from higher level executives because it is the beneficiary who makes on-site decisions about the major issues concerning the hotel operations. Counsel also submits various contracts signed by the beneficiary on behalf of the petitioner, as documentary evidence the beneficiary makes major and final decisions.

Counsel asserts that the beneficiary also qualifies as a manager. Counsel contends, as is clearly detailed on the petitioner's organizational chart, the beneficiary supervises and oversees the general manager who, in turn, supervises other managers. Counsel concludes that the beneficiary does not perform the productive services of the hotel but rather oversees the management of such activities.

Counsel's assertions are persuasive. 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). The initial description of the beneficiary's duties is general and does not in and of itself support a finding that the beneficiary's duties are managerial or executive in nature. Counsel, however, has submitted documentary evidence of the beneficiary's "executive" decision-making. In addition, the petitioner has provided sufficient documentary evidence that the beneficiary supervises a managerial employee.

The petitioner has provided sufficient evidence to establish that the beneficiary's position is a primarily managerial and executive position. The decision of the director is withdrawn.

However, the petitioner has not established a qualifying relationship with the beneficiary's overseas employer. To qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities, in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity. The petitioner has submitted contradictory evidence regarding its qualifying relationship with the beneficiary's overseas employer. The petitioner stated in the letter in support of the petition that it was a wholly-owned subsidiary of a Japanese company. The petitioner provided a stock certificate issued to the Japanese company in support of this statement. However, the petitioner in its Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return for the year 1999, on Schedule E and on Schedule K, identifies an individual as its 100 percent owner. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The petitioner has not established a qualifying relationship with the beneficiary's overseas employer.

Accordingly, this matter will be remanded for the purpose of a new decision. The director must afford the petitioner reasonable time to obtain evidence as regards its qualifying relationship

with the beneficiary's overseas employer, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

ORDER: The director's decision of June 11, 2002 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.

RECEIVED
0105 09:53 AM
JUN 11 2002