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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

[Redacted]

File: [Redacted]

Office: TEXAS SERVICE CENTER

Date:

APR 14 2003

IN RE: Petitioner:  
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]

**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 Director of the Texas Service Center denied the employment-based preference visa petition and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a Florida corporation that seeks to employ the beneficiary as its managing director. The petitioner, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition on the ground that the proffered position is not in an executive or managerial capacity.

On appeal, counsel submits a brief. Counsel states, in part, that the director's decision is unjust, as the evidence indicates that the beneficiary will dedicate her time to managerial and executive duties.

Section 203(b) of the Act, 8 U.S.C. § 1153(b), 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.

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, 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. 8 C.F.R. § 204.5(j)(1). 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 an executive or managerial capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The petitioner states that it is an affiliate to the foreign entity, [REDACTED] of Ecuador. According to the petitioner both it and Consultores are owned by Industrial Tobak, S.A. of Ecuador. The petitioner states that it is engaged in consulting, administrative services and exporting general merchandise, and that it employs four persons. The petitioner asserts that the overseas entity currently employs the beneficiary as its director manager, and that it is offering to employ the beneficiary as its managing director at a salary of \$25,000 per year.

The issue to be discussed is whether the proffered position of managing director is in an executive or managerial capacity.

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.

At the time of filing the I-140 petition with the Texas Service Center on March 14, 2001, the petitioner described the job of managing director as:

[The beneficiary's] proposed duties in the United States will be the overall management of the company, the restructuring [of] the company's infrastructure in order to increase the volume of business transactions and therefore effecting more profits. Hiring of new personnel and dismissal of personnel, determining salaries and all employee benefits, establishing and implementing corporate policies and goals, reporting directly to our parent company in Ecuador, [and] seeking new investments for the company and greater profit margins.

Although the petitioner claimed on the I-140 petition that it employed four persons, the petitioner did not identify these individuals by name, job title or job description. Therefore, on January 29, 2002, the director requested additional evidence from the petitioner, to include an organizational chart that listed the names, titles and job duties of all employees, and a detailed description of the proffered position.

In response, the petitioner submitted an organizational chart, which showed that it employed one manager, one export manager, one administrative assistant, and one receptionist/bookkeeper. Counsel described the jobs of these employees as:

Manager, [name]. He supervises the work performed by the Export Manager and other employees, manages and directs the company, is responsible for all operational decisions for the company, reviews budget and marketing programs, meets with suppliers and potential customers, and reports directly to the foreign company.

Export Manager, [name]. He is in charge of all exports, tariffs, manifests, inventory control and seeking products for clients, travels [sic] to trade shows, and reports [sic] directly to [the manager].

Administrative Assistant, [name]. She assists the Manager and Export Manager, meets with customers, contacts suppliers for the best prices, keeps track of shipments, and assists with shipment[s]. She reports to the Export Manager.

Receptionist/Bookkeeper, [name]. She answers the telephones, does the bookkeeping, [maintains] accounts receivable and accounts payable, types letters, files[,] and reports to the Export Manager.

Regarding the beneficiary's job description, counsel reiterated the job duties that the petitioner had previously outlined. He also provided the following breakdown of the percentage of time that the beneficiary would devote to her job responsibilities:

Initially, [the beneficiary] will spend approximately 40% of her work time in market research, which will give her the necessary information to restructure the company's operation and therefore elaborate [sic] the appropriate market approach and strategy.

[The beneficiary] will spend approximately 20% of her work time in negotiation with advertising agencies, recommending action on web updates, and reviewing, negotiating and executing contracts. Furthermore, [the beneficiary] will dedicate approximately 30% of her work time to customer relations, supervising, maintaining and updating customer accounts, acting as a liaison between the creative staff and clients, and planning and developing clients' needs. Finally, the beneficiary will spend approximately 10% of her time reviewing sales reports, comparing them with other years and competitors, traveling to trade shows, meeting with suppliers, negotiating and executing contracts with suppliers, and traveling abroad in search of new products to meet the customers' demands.

The director denied the petition because the beneficiary's job description indicated that she would provide the services of the company rather than managing or directing the management of the petitioner's operations. The director determined that the beneficiary would not be employed in an executive or managerial capacity.

On appeal, counsel states that the director's decision is unjust because the beneficiary will perform duties that are associated with directing the management of the petitioner. Counsel asserts that the beneficiary will direct and manage the U.S. organization, establish the goals and policies of the organization, supervise and control the work of other supervisory and managerial employees, exercise wide latitude in discretionary decision-making, and maintain complete authority to hire and hire and make all personnel decisions.

The petitioner fails to establish that the beneficiary would be coming to the United States to work in an executive or managerial capacity. The beneficiary's job description indicates that she would spend approximately 90 percent of her time performing tasks that would enable the petitioner to provide its services. According to counsel, the beneficiary would perform market research 40 percent of the time, and would negotiate contracts, contact clients, travel to trade shows, and meet with suppliers 50 percent of the time. Although counsel states that the beneficiary would manage the petitioner's operations, this job responsibility would be ancillary to her sales and marketing activities. The beneficiary, therefore, would not be employed in a primarily executive or managerial capacity because she would be performing tasks that are necessary to provide the petitioner's services. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm. 1988).

Furthermore, one element of the beneficiary's job description does not comport with information on the organizational chart. According to the petitioner, the beneficiary would be responsible for acting as a liaison between the "creative staff" and clients. However, the record does not contain any information regarding the individuals who comprise the alleged creative staff. A review of the petitioner's staffing levels reveals that the petitioner employs one manager, one export manager, one administrative assistant, and one bookkeeper; none of these positions would typically be considered "creative" in its scope. The beneficiary's job duties allegedly include recommending action on web updates. Consequently, the beneficiary might be expected to supervise a "creative staff" of web designers. The record, however, contains no evidence that the petitioner employs any such staff. The petitioner's failure to support its assertion that the beneficiary would direct a creative staff calls into question the reliability and sufficiency of the beneficiary's overall job description, and whether it realistically depicts the beneficiary's proposed job responsibilities within the United States entity. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Additionally, evidence regarding the petitioner's staffing levels indicates that the beneficiary would be coming to the United States to work as a first-line supervisor of nonprofessional employees.

The petitioner bears the burden of establishing that the beneficiary would serve as more than a first-line supervisor. 8 C.F.R. § 204.5(j)(4)(i). The petitioner indicated that the beneficiary would supervise one manager who, in turn, would supervise one export manager. The export manager would supervise the administrative assistant and the secretary/bookkeeper. The job description associated with the position of manager, the beneficiary's immediately subordinate employee, contains duties that are clearly sales and marketing functions. Additionally, the export manager's job description indicates that he performs sales duties although the petitioner has also given him a managerial title. The evidence of record before the Bureau at the present time indicates that the beneficiary would be employed as a first-line supervisor to sales and marketing employees, not to managerial, supervisory or professional employees.

Despite counsel's assertion on appeal that the evidence clearly establishes that the beneficiary would be employed in an executive or managerial capacity, the evidence presently in the record fails to corroborate counsel's claims. Therefore, the director's decision will not be disturbed.

Beyond the decision of the director, there is insufficient evidence of the beneficiary's employment in an executive or managerial capacity for at least one year in the three years immediately preceding the filing of the I-140 petition. The petitioner's description of the beneficiary's overseas position reiterates the statutory definitions of executive and managerial capacity. Therefore, it is of little value in determining the beneficiary's daily activities and whether these activities could be considered functions of an executive or manager. However, as the appeal is being dismissed on another ground, this issue will not be 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. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed. The petition is denied.

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