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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



File: WAC 02 049 52130

Office: CALIFORNIA SERVICE CENTER

Date: **APR 17 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 Director of the California Service Center denied the employment-based preference visa and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner seeks to employ the beneficiary as a food and beverage manager (banquet manager). 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 did not apply the proper standard to determine the beneficiary's managerial capacity.

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 is one organization within the H Group Holding, Inc. corporate group that owns the Hyatt hotel chain. The petitioner states that it is one of the largest and most prestigious luxury/convention hotels in the State of Nevada. According to the

petitioner, it currently employs approximately 750 people, including the beneficiary, who is currently occupying the proffered position as an L-1A nonimmigrant worker. The petitioner is offering to employ the beneficiary on a permanent basis at a salary of \$45,800 per year.

The issue to be discussed in this proceeding is whether the proffered position is in a managerial capacity. The Bureau notes that the petitioner is not seeking to classify the beneficiary as a multinational executive.

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.

The petitioner filed the I-140 petition with the California Service Center on November 21, 2001. At that time, the petitioner described the position of food and beverage (F&B) manager (banquet manager) as follows:

[The beneficiary] supervises 25-35 employees, including an assistant manager and four captains. [The beneficiary] is responsible for hiring, training, supervising and overall staff development. In addition,

[the beneficiary's] key areas of responsibilities include the financial administration, marketing efforts, and safety and maintenance aspects of the restaurant department. Furthermore, [the beneficiary] is responsible for the Food and Beverage function of all hotel events, purchasing and managing Food and Beverage department inventory, and overseeing scheduling and payroll of departmental staff.

The director was not persuaded that the proffered position was a managerial position based upon the petitioner's initial evidence. Therefore, on February 13, 2002, the director asked the petitioner to submit additional evidence to include the following:

- U.S. Business Organizational Chart: Submit a copy of the U.S. company's line and block organizational chart describing its managerial hierarchy and staffing levels. The chart should include the current name of all executives, managers, supervisors and number of employees within each department or subdivision. Clearly identify the beneficiary's position in the chart and list all employees under the beneficiary's supervision by name and job title. Also include a brief description of job duties, educational level, annual salaries/wages . . . and immigration status . . . for all employees under the beneficiary's supervision. Finally, explain the source of remuneration of all employees and explain if the employees are on salary, wage, or paid by commission. (Emphasis in original.)
- Duties in the U.S.: Submit a more detailed description of the beneficiary's duties in the United States. Be specific; list the education and employment qualifications for the position in the United States company. Include evidence that the beneficiary meets the petitioner's qualifications and if required, that the beneficiary has the ability to speak, read and write English. Indicate exactly whom the beneficiary directs including their job title[s] and position description[s]. List all employees under the beneficiary's direction. Also, indicate [the] percentage of time spent in each of the listed duties.

In response, the petitioner submitted two organizational charts for the F&B subdivision; one chart pertained to the F&B organizational structure in 1999, and the other chart pertained to its 2002 organizational structure. The chart for 1999 indicated that the position of F&B manager was the third highest position in the F&B organizational hierarchy; it was under the supervision of the assistant F&B director, a position that was supervised by the F&B director. The F&B manager supervised one assistant banquet manager, who, in turn, supervised four banquet captains and two convention services (CS) supervisors. The CS supervisors, in turn, supervised 20 employees. The 2002 organizational chart showed the same basic organizational hierarchy, except that the F&B manager was the

second highest position in the F&B organizational hierarchy instead of the third highest position, and the CS supervisors supervised 35 employees instead of 20 employees.

Regarding job descriptions for the beneficiary and the individuals under his supervision, the petitioner stated the following:

[A]s Banquet Manger, he is responsible for the entire Banquet Department for the hotel. . . . Our Banquet Department alone generates approximately \$5 [million] in revenue a year. . . . [H]e directly supervises and oversees the following managerial employees: Assistant Banquet Manager, four (4) Banquet Captains; and two (2) Convention Services (CS) supervisors. All seven (7) of these managerial positions are filled by individuals with Bachelor's Degrees. . . . [The beneficiary] has the authority to recommend hiring, firing, or other personnel actions (such as discipline accommodations, training, promotions, etc.) for all staff whom he supervises (totaling 42). Finally [the beneficiary] has complete discretion over the day-to-day operations of his department. Specifically, these duties include the following:

- *Staff Supervision - 55% of workweek*

Manage and supervise all Banquet employees, totaling thirty-five (35) staff and seven (7) managers. Train, discipline, and perform reviews of all employees in Banquet department. Offer input as to whether to hire potential employees or terminate existing employees. Develop programs and training manual materials to be used within Banquet Department. Conduct departmental meetings with his own staff and inter-departmental meeting[s] with other high level hotel mangers. Resolves employee and customer disputes and conflicts. Oversees menu planning and development.

- *Budget Forecasting - 30% of workweek*

Maintain and control budget for entire Banquet Department. Prepare annual budget for Banquet Department. Purchase all inventory for Department and ensure such purchases are within budget. Maintain inventory at most efficient and profitable level for Department. Responsible for employee payroll. Since Banquet is one of the highest revenue generating departments of the hotel, the budget functions of this position are substantial.

- *Special Projects - 15% of workweek*

Responsible for all special projects as assigned by Director of Food & Beverage, such as organize Banqueting functions of private meetings and parties.

The positions of assistant banquet manager and banquet captain were described as "oversee operation of all planned meal functions/events." The position of CS supervisor was described as "oversee set-up of all planned functions/events.❖ The assistant

banquet manager and the banquet captains were listed as being college graduates, while the CS supervisors were listed as having some college education.

The director denied the petition because the evidence failed to establish that the beneficiary would supervise managers or professional employees. The director stated hotel and restaurant employees are in the service industry and, therefore, are not considered to be professionals regardless of whether they hold baccalaureate degrees.

On appeal, counsel states that the director misapplied the law when determining that the beneficiary would not be employed in a managerial capacity. According to counsel, the director improperly focused on whether the managers and supervisors who work under the beneficiary's supervision were professionals. Counsel states that it is only necessary to determine whether managers and supervisors are professionals if the beneficiary is a first-line supervisor. Counsel asserts that the beneficiary would not be working as a first-line supervisor because he would direct a staff of seven managers, who, in turn would supervise 35 employees. Counsel states that the beneficiary would be responsible for an annual budget of \$500,000 and for the direction of a department that generates the highest revenues for the petitioner.

Counsel presents a persuasive claim for classifying the proffered position as one that is primarily managerial.

The petitioner submitted two organizational charts; one chart pertained to the F&B department's organizational hierarchy in 1999, while the other chart depicted the F&B department's organizational hierarchy in 2002. Because the petition was filed in November 2001, the 2002 organizational chart is not relevant to this proceeding, as the Bureau cannot consider any changes to an organizational hierarchy that come into being subsequent to the filing of a petition. See *Matter of Bardouille*, 18 I & N Dec. 114 (BIA 1981); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, only information from the 1999 organizational chart shall be considered.

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). According to the 1999 organizational chart, the beneficiary would serve in the third highest position within the F&B department's organizational hierarchy. He would supervise one assistant manager who, in turn, would supervise six supervisors. Additionally, the beneficiary's job description indicates that he would direct and control the daily activities of banquet operations, which include budget preparation, inventory control and staff allocation.

The 1999 organizational chart clearly shows that the beneficiary would not serve as a first-line supervisor, as he would directly

supervise managerial personnel and indirectly supervise supervisory personnel. The petitioner has established that the beneficiary would manage the banquet functions, control the work of managerial and supervisory employees, maintain authority over various personnel actions, and exercise discretion over the banquet operation's daily activities. Thus, the proffered position meets the definition of managerial capacity as that term is defined at section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). Accordingly, the petitioner has overcome the ground for denying the petition. The director's decision shall, therefore, be withdrawn.

It must be noted that the director based his decision on an improper standard. In the denial letter, the director stated "hotel and restaurant employees are in the service industry and are not considered professionals. . . ." This comment is inappropriate. The director should not hold a petitioner to his undefined and unsupported view of the status of occupations within the hotel and restaurant industries. The director should, instead, focus on applying the statute and regulations to the facts presented by the record of proceeding. An individual who functions as a supervisor or a manager need not also occupy a professional position, regardless of the type of business in which the individual is employed.

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 met its burden of establishing that the beneficiary merits classification for an employment-based preference visa as a multinational manager.

ORDER: The appeal is sustained. The petition is approved.

