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U.S. Department of Homeland Security

Breau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass. Ave.,3rd Floor
Washington, D.C. 20536

APR 17 2003

[redacted]

File: [redacted] Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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)

PUBLIC COPY

ON BEHALF OF PETITIONER: [redacted]

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 of 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, Texas Service Center. The matter is now before the Adminstrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner was incorporated in 1998 in the State of Florida and is claimed to be a subsidiary of [redacted], located in Colombia. On the petition, the petitioner claimed to be engaged in the purchase and export of supplies, spare parts, and equipment. It seeks to employ the beneficiary as the vice president of marketing and sales. 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's proposed position can be considered managerial or executive in nature.

On appeal, counsel asserts that the director's denial was not based on the evidence of record and submits a brief in support of such claim.

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 prospective duties as follows:

> As Director of Sales for , Mr. duties will include overseeing and directing sales activities and investigating potential clients and markets in the United States and Latin America in order to develop and control sales programs. He will coordinate sales distribution by establishing sales territories, quotas, and goals. He will also analyze sales statistics to formulate policies and to assist in promoting the company's products. Within this framework, Mr. will review market analyses to determine customer needs, volume potential, price schedules, and discount rates, and develop sales campaigns to accommodate goals of company. In addition, he will eliminate unprofitable items from sales line and analyze and control expenditures to conform to budgetary requirements. Lastly, Mr. will prepare periodic sales reports showing sales volume and potential sales, and will direct product research and development.

In response to the director's request for additional evidence, issued on March 8, 2001, the petitioner indicated that the beneficiary was employed abroad in the position of general manager which involved the following duties:

> Responsible for the financial development and management of the company, responsible for making the sales strategies of the company and supervising sales activities, and responsible for the relations between our company and the companies we represent.

The petitioner provided the following breakdown of time spent on each duty: financial management 30%, sales management 55%, and public relations 15%. The petitioner also submitted a list of individuals employed by the petitioner. The positions occupied by these individuals include an administrative assistant, an office clerk, a business development manager, and the president of the company.

The director denied the petition on July 18, 2001, concluding that the beneficiary's proposed job duties would not be primarily managerial or executive.

On appeal, counsel asserts that the director failed to consider the evidence submitted in response to the director's request and claims that proof of the director's alleged negligence lies in his oversight of the petitioner's new purpose as a consulting firm

rather than an import and export operation. However, counsel's argument is incorrect. In the denial, the director stated the petitioner's purpose as it was originally stated in part five of the Form I-140 petition. The petitioner's claim to have changed its business to take on a different purpose is supported by invoices which contain descriptions in Spanish and are unaccompanied by certified English translations. Thus, the Bureau is unable to determine whether the invoices issued by the petitioner were for goods or for services. Consequently, the Bureau cannot assume the petitioner's unsupported claim as fact. 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).

Counsel also argues that the petitioning entity has enough employees to relieve the beneficiary from having to perform nonqualifying duties. The names and job descriptions of the petitioner's current employees have been submitted. However, in determining whether the nature of the beneficiary's duties can be classified as executive or managerial, the Bureau will first look to the description of the proposed job duties. See 8 C.F.R. § 204.5(j)(5). In the instant case, the petitioner provides the following additional list of the beneficiary's proposed duties:

1. He will manage and develop the consulting and representative services, and the purchasing agent service.

2. He will hire and train the Business and Sales Representative Force.

3. He will supervise the Office Manager, Business Development Manager, and the Business and Sales Representative Force.

4. He will manage sales activities, and investigate potential clients and markets in the United States and Latin America in order to develop and control sales programs.

5. He will coordinate sales distribution by establishing sales territories, quotas, and goals.

6. He will analyze sales statistics to formulate policies and to assist in promoting the company's products.

7. He will review market analyses to determine customer needs, volume potential, price schedules, and discount rates, and develop sales campaigns to accommodate goals of company.

8. He will eliminate unprofitable items from sales line and analyze and control expenditures to conform to budgetary requirements.

9. He will prepare periodic sales reports showing sales volume and potential sales, and will direct product research and development.

Contrary to counsel's claim, the above list of duties indicates that the beneficiary will be performing such duties as developing sales campaigns and preparing sales reports, which are not of an executive or managerial nature. While the petitioner also indicates that the beneficiary will manage a number of functions and supervise individuals, the descriptions are too vague and broad to convey an understanding of what the beneficiary will actually be doing on a daily basis. Thus, the only duties that illustrate more clearly what the beneficiary will be doing are not qualifying.

Consequently, after reviewing the description of the beneficiary's proposed job duties, it is concluded that counsel's arguments are not persuasive. The description of the duties to be performed by the beneficiary in the proposed position does not persuasively demonstrate that the beneficiary will have managerial control and authority over a function, department, subdivision or component of the company. Further, the record does not sufficiently demonstrate that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties. 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 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.