

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

PUBLIC COPY

AUG 18 2003

FILE: WAC 01 096 50576 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
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)

ON BEHALF OF PETITIONER:

[REDACTED]

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

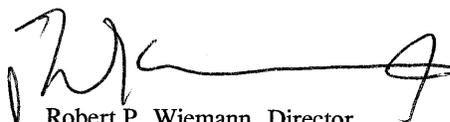
INSTRUCTIONS:

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

The petitioner was incorporated in the State of Arizona and is claimed to be an affiliate of Yonke y Auto Usados Chihuahua, located in Mexico. The petitioner is engaged in the business of purchasing and selling pre-owned vehicles and salvaged auto parts. It seeks to employ the beneficiary as its manager. 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 would be employed in a managerial or executive capacity.

On appeal, counsel submits a brief and additional evidence refuting the director's findings.

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 past and prospective duties as follows:

Past Duties:

His possibilities [sic] included the recruitment of training of staff, of which he had hiring and firing authority. He was also responsible for coordinating the work of all the employees within the operation, assuring compliance with local laws, administration of the office and standards for work quality. He exercised complete day-to-day discretionary [sic] thoroughly all the work of the office. Additional responsibilities included those of reviewing activities of both the professional administrative staff, implementing corporate policies and professional standards. He also negotiated purchase

contracts with suppliers and purchasing companies and other businesses related to salvaged auto parts.

Proposed Duties:

This position is a key managerial one because [the beneficiary] is essentially the over-all supervisor of the entire United States operation. [The beneficiary] manages and supervises the areas of business costs, collections, sales, personnel hiring and marketing. He has day-to-day discretionary authority in coordinating and directing to [sic] work of each sub-department within the operation. He evaluates the performance of all current employees and makes decisions on hiring and firing of personnel. Additionally, he is responsible for maintaining the high standards of performance which have led to the company's success. . . .

On April 11, 2001, the director issued one of two requests for additional evidence. In the initial request, the director instructed the petitioner to submit documentation establishing the existence of a qualifying relationship. On September 18, 2001, the director issued another request for additional evidence, instructing the petitioner to submit organizational charts for the foreign and U.S. entities. The petitioner was asked to identify the beneficiary's position on both charts and to submit a more detailed description of the beneficiary's job duties in the United States, accompanied by a list of the employees the beneficiary supervises, their brief job descriptions, education levels, and salaries or wages, as well as state quarterly wage reports for all employees for the last four quarters.

The petitioner complied with the director's requests. The foreign entity's organizational chart indicates that the beneficiary's was second in command, acting directly under the owner of the company. The chart also indicates that the beneficiary's immediate subordinate was a general supervisor whose job was to supervise the company's three remaining employees. The petitioner's organizational chart indicates that the beneficiary, in the position of regional general manager, is third from the top of the hierarchy, supervised directly by the company's vice president. The chart also indicates that the beneficiary's immediate subordinates are three general managers,

each in charge of a different store location, and a finance manager. The petitioner provided the following description of the beneficiary's job duties in the United States:

Office Administration in the Yuma Offices as well as Delicias Mechanic Shop. Administers mechanic shop by radio several hours a day. The two way Radios are located in the San Luis office as well as in the Yuma Main office communicating with the Delicias Mechanic Shop radios. A weekly meeting also takes place generally on Saturdays for about one and a half to two hours. Another duty is Checking and making sure everything is organized, clean and also interview the employees to make sure there are no problems or correct any problems there may be[.] These duties are done randomly for approximately three hours.

* * *

In charge of coordinating activities for all three dealerships in Yuma. Also takes care of complaints, employee hiring, trains new employees, advertising, makes deposits, sales, amongst other office work as well as work closely with the collector to maintain accounts current. Time spent doing all these duties is very difficult to determine due to the fact that the volume of business varies daily. The estimated time would be approximately 75% and the other 25% of time is spent supervising the company in Mexico. . . .

The director denied the petition, concluding that the petitioner failed to submit sufficient evidence to establish that the beneficiary had been and would be employed in a primarily managerial or executive capacity.

On appeal, counsel submits a brief asserting that it is the beneficiary's management style rather than his function to review the daily operations of each of the petitioner's U.S. locations. Counsel further claims that the beneficiary's "primary role is to supervise the general managers below him." 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). In the instant matter, the beneficiary's proposed job duties include handling complaints, advertising, making deposits,

sales, and other office work. Even though counsel asserts that the beneficiary's primary task is managing his subordinate general managers, there is no such suggestion in the above description of the duties. Rather, the description provided suggests that the beneficiary performs a variety of day-to-day operational tasks that have no relation to managing personnel. In fact, the summary of the beneficiary's duties does not list any subordinate positions that would perform the essential functions of the petitioner's business or the beneficiary's duties. 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). Although counsel cites a prior AAO decision in support of the petitioner's claim, that decision is unpublished and as such is not binding on Bureau employees. See 8 C.F.R. § 103.3(c). The description of the beneficiary's job abroad is also unclear as to the specific duties the beneficiary performs. Merely stating that he reviews the work of his staff and exercises discretionary authority does not clarify exactly what the beneficiary does on a daily basis. Although the description of duties does specifically indicate that the beneficiary dealt with suppliers and purchasing companies in negotiating contracts, this duty suggests that the beneficiary was performing, rather than managing, the foreign entity's essential function which is to buy and sell pre-owned vehicles and salvaged auto parts. 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 of Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Furthermore, counsel asserts that the Bureau previously conceded that the beneficiary met all statutory requirements for managerial capacity when it approved the petitioner's prior L-1A visa petitions. However, the director's decision does not indicate whether she reviewed the prior approval of the nonimmigrant petition referred to by counsel. The record of proceeding does not contain copies of the visa petition that is claimed to have been previously approved. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute clear and gross error on the part of the Bureau. The Bureau is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals, which may have been erroneous. See,

e.g. *Id.* at 597. It would be absurd to suggest that the Bureau or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988).

On review, the record contains insufficient evidence to demonstrate that the beneficiary has been and will be employed in a primarily managerial or executive capacity. Despite the beneficiary's high-level position within the hierarchies of the foreign entity's and the petitioner's respective organizations, and regardless of his degree of discretionary authority, the description of the beneficiary's duties in either position does not persuasively demonstrate that the beneficiary has been and will primarily act in a managerial or executive capacity. 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.

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.