

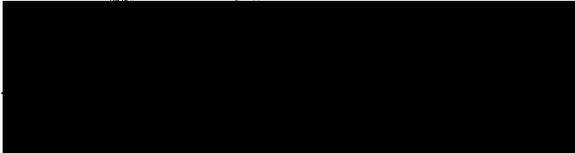
U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

B4

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

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AUG 18 2003

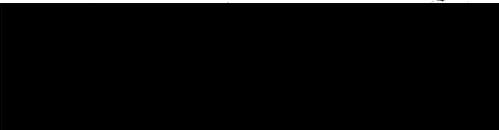
FILE: WAC 01 254 58712 Office: VERMONT SERVICE CENTER Date:

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:



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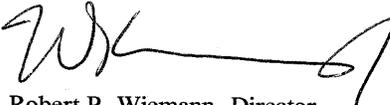
INSTRUCTIONS:

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 California and is claimed to be a subsidiary of Service Corporation International, Ltd., located in Canada. The petitioner is engaged in the business of providing funeral services, including funeral homes, cemeteries, and crematoria. It seeks to employ the beneficiary as its family services consultant. 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 statement and additional evidence and asserts that the additional evidence is sufficient to sustain the appeal.

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:

- Direct and coordinate burial procurement, outside services;
- Develop and oversee programs related to outside funeral planning;
- Oversee contracts, insurance benefits and plans;
- Ensure that prearranged revenue flow is portioned into the perpetual care trust;
- Direct and coordinate staff;
- Train personnel;

- Coordinate business liaisons with other SCI owned facilities in Orange County, California, and
- Report to the Director, Sales, Orange County.

On December 6, 2001, the director instructed the petitioner to submit in part, its organizational chart identifying the beneficiary's position, a more detailed description of the beneficiary's job duties indicating the percentage of time spent performing each duty, and a list of all of the employees under the beneficiary's supervision. The petitioner was asked to provide brief job descriptions, education levels, and salaries/wages of all of the beneficiary's subordinates, as well as state quarterly wage reports for all employees for the last four quarters.

The petitioner provided the Bureau with its organizational chart indicating that the head of the organization is an area sales director, whose subordinates include a "cluster" administrator, a "cluster" trainer, and five managerial positions, one of which is filled by the beneficiary. The chart also indicates that the beneficiary's immediate subordinates are a staff of personnel who are named in an additional statement which indicates that the staff consists of five family service counselors whose salaries range from \$110,000 annually to \$55,000 annually plus commission. The petitioner failed to provide the Bureau with the remainder of the information and documents requested by the director.

The director denied the petition, noting that the petitioner failed to provide the Bureau with much of the requested evidence. The director concluded that the petitioner failed to submit sufficient evidence to establish that the beneficiary's duties in the United States would be of a primarily managerial or executive capacity.

On appeal, the petitioner submits an additional job description for the beneficiary, a general job description for the counselors whom the beneficiary supervises, and explains that the petitioner did not submit the requested quarterly wage reports because they are kept at the petitioner's headquarters, located in Texas.

It is noted that failure to submit requested evidence which precludes a material line of inquiry, as the petitioner did in

the instant case, shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Furthermore, where a petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, the Service will not consider evidence submitted on appeal for any purpose. Rather, the Service will adjudicate the appeal based on the record of proceedings before the director. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). If the petitioner desires further consideration of such evidence, the petitioner may file a new petition. As the petitioner in the instant case failed to submit evidence requested in the Service's notice, the information submitted on appeal in regards to the job descriptions of the beneficiary's subordinates, the beneficiary's own job description, and wage reports of any of the petitioner's employees will not be considered.

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 only description of the beneficiary's job duties that the petitioner provided is too general to convey an understanding of exactly what the beneficiary will be doing on a daily basis. The summary of the beneficiary's duties does not include a description of any subordinate positions which would perform the essential functions of the petitioner's business or the beneficiary's duties. Furthermore, the submitted compensation statement lists the beneficiary's job code as "salesfs," the same code that the beneficiary's purported subordinates hold. The compensation report also lists the beneficiary's "customers" and "sales dates," thereby raising questions as to whether the beneficiary is engaged in sales rather than management. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Upon review, the description of the beneficiary's job duties lead the Service to conclude that the beneficiary is performing as a salesperson or "staff officer," not as a manager or executive.

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. Further, 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. Nor does the record sufficiently demonstrate that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve her 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 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.

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