

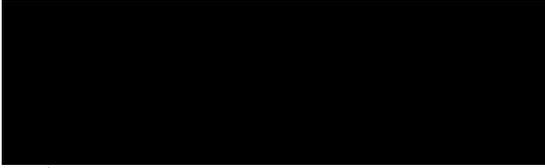
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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



DEC 15 2003

FILE: WAC 01 277 55580 Office: CALIFORNIA 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:



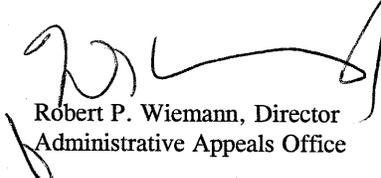
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 matter will be remanded for further consideration.

The petitioner was incorporated in March 2000 in the State of California and is claimed to be an affiliate of [REDACTED] located in Zimbabwe. The petitioner is engaged in the business of manufacturing clothes for big and tall men. The petitioner seeks to employ the beneficiary as its general 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.

In his decision, the director made the following observations which lead to the denial:

The petitioning entity does not have a reasonable need for an executive because they are merely a four-employee consulting business. This type of business does not require or have a reasonable need for an executive because all they do is manufacture clothing. Additionally, it is contrary to common business practice and defies standard business logic for such a small company to have an executive, as such a business does not possess the organizational complexity to warrant having such an employee. . . .

Because the company only has three other employees, the beneficiary will have to be assisting in the performance of the numerous menial tasks involved in manufacturing clothing because there aren't enough employees left to perform them.

This comment is inappropriate. The director should not hold a petitioner to her undefined and unsupported view of "common business practice" or "standard business logic." The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding. Although CIS must consider the reasonable needs of the petitioning business if staffing levels are considered as a factor, the director must

articulate some reasonable basis for finding a petitioner's staff or structure to be unreasonable. Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In the instant case the director based the denial, in large part, on the size of the petitioner's staff. Such reasoning is contrary to established law and fails to indicate which of the beneficiary's tasks the director perceives as "menial."

The director also concluded that the employees under the beneficiary's supervision cannot be deemed professionals because the employees they supervise are not professionals. However, the definition of managerial capacity contained in section 101(a)(44)(A) of the Act applies to the beneficiary of the present petition and not to his subordinate employees. Based on the director's reasoning, no beneficiary would qualify as a manager if the organization's ultimate, lower-tier subordinates were not professional employees, regardless of how many layers of management lay between the beneficiary and the non-professional employee. According to the director, each tier of management would be disqualified as the first-line supervisor of non-professional staff. In the present matter, the organizational chart indicates that the beneficiary's direct subordinate is a manager who acts as a first-line supervisor and relieves the beneficiary from supervising non-professional employees. Consequently, the beneficiary may not be disqualified based on the conclusion that he does not manage professional employees where the basis for such reasoning is that the second tier of managers supervises the petitioner's non-professional employees.

Furthermore, the director made several significant factual errors when he referred to the petitioning enterprise as a "four-employee consulting business." Contrary to the director's statements, the petitioner has made it clear in numerous prior submissions that it is a clothes manufacturing business. The petitioner has never referred to itself as a consulting firm. The petitioner also stated in the petition that it has 21 employees, not four as indicated by the director. The petitioner has submitted its payroll and quarterly tax statements indicating that its personnel is significantly larger than what was perceived by the director. The director concluded that the petitioner's small four-person staff makes it necessary for the beneficiary to perform non-qualifying tasks because the petitioner does not employ a sufficient staff to allow the beneficiary to focus primarily on managerial duties. Therefore,

the director not only erred in misstating the relevant facts, but he then relied on those erroneous facts to formulate the basis for this denial.

After a thorough review of the record, it is concluded that the denial is deficient as it is based on the director's vague definitions of the law and significant errors of fact. However, the record contains a factual discrepancy of which the petitioner may or may not be aware. In the initial petition, the petitioner claimed to employ 21 individuals. However, in counsel's brief references were made to the petitioner's staff of 12 employees. The director must request appropriate evidence of the petitioner in order to clear up the inconsistency. Accordingly, the case will be remanded for a thorough review of the documentary evidence in the record and a proper analysis thereof.

**ORDER:** The decision of the director, dated May 24, 2002, is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.