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

[redacted]

DEC 17 2003

FILE: WAC 02 034 54347 Office: CALIFORNIA 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)

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 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 appeal will be dismissed.

The petitioner was incorporated in 1995 in the State of California and is claimed to be the parent corporation of the [redacted]franchise, located in China and Turkey. The petitioner is engaged in the business of consulting, venture-developing, and trading. It seeks to employ the beneficiary as its commercial 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 several statements 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 stated that the beneficiary's duties "include initiating and developing the company's U.S. sales and customer base, participating in seminars to increase brand awareness for the company and other companies we represent and liaising [sic] with our affiliates in China and Turkey."

On February 26, 2002, the director instructed the petitioner to submit, in part, the foreign and U.S. petitioner's organizational charts identifying the beneficiary's positions in each company, and more detailed descriptions of the beneficiary's job duties abroad and in the United States. The petitioner was also asked to submit a list of all those employees who have been and would be under the beneficiary's supervision, their brief job descriptions, education levels, and

their salaries or wages, as well as state quarterly wage reports for all employees for the last four quarters.

In response to the above request, the petitioner submitted the requested organizational charts. The chart pertaining to the U.S. entity indicates that the company consists of three employees, including a president, commercial manager (the beneficiary), and a marketing manager. The organizational chart for the Turkey office, which employed the beneficiary, consisted of four employees, including the beneficiary as chief representative, an area manager, an accountant, and "legal." Although that chart also indicates that the company has part-time employees, there is no indication as to how many part-time employees there are, who they are, or what functions they perform. In each case, the beneficiary had and would have exactly one employee under his direct supervision. In the foreign entity the beneficiary supervised the area manager and in the proposed position with the U.S. petitioner the beneficiary would supervise the marketing manager.

The director provided, verbatim, the petitioner's description of the beneficiary's proposed list of duties in the United States. Therefore, that list need not be repeated in this proceeding.

The director denied the petition stating, in part, that the petitioner's "business does not possess the organizational complexity to warrant having" three employees that are at the managerial or executive level or that the company even needs the services of one primarily executive employee such as the beneficiary. The director also stated that the description of the beneficiary's duties does not establish that he will be employed in a primarily managerial or executive capacity.

On appeal, counsel states that the beneficiary would be overseeing a company that earns more than $2 million in sales and that "supervision of such a large operation cannot reasonably be considered to entail 'menial' tasks." However, CIS cannot draw conclusions as to the nature of the beneficiary's tasks based on the petitioner's earnings, no matter how impressive those earnings may be. In examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). In the instant case, the description of duties provided by the petitioner indicates that the beneficiary would personally be the one to conduct market

research, meet with clients, deal with the petitioner's suppliers, and keep track of shipping and deliveries. These tasks are not managerial or executive in nature. Rather, they suggest that the beneficiary would be performing as a professional or "staff officer," not as a manager or executive. This conclusion is further supported by the fact that the summary of the beneficiary's duties does not indicate that the beneficiary's subordinate would perform the essential functions of the petitioner's business or the beneficiary's duties.

Counsel claims further that the beneficiary does not perform any of the petitioner's marketing functions and states that those functions are performed by the beneficiary's professional subordinate. However, the beneficiary's list of duties specifically indicates that the beneficiary performs market research, a duty that is directly related to the marketing function. Even though the marketing director's list of duties indicates that she also conducts market research, this does not mean that the same function cannot also be performed by another company employee, particularly in a company that employs a total of three individuals. Moreover, the fact that the beneficiary oversees a professional employee in no way leads to the conclusion that the beneficiary's primary task is managing that employee. The description of the beneficiary's duties suggests that the beneficiary actively performs a large portion of the petitioner's essential functions. 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 Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Since filing the appeal, counsel has submitted an additional statement in which he describes, in great detail, the beneficiary's numerous attributes and ways in which he uses those attributes to further the petitioner's business agenda. However, the beneficiary's significant role in the petitioner's company structure is not the issue in this proceeding. Rather, the key issue is whether the beneficiary has been and will be primarily performing in the capacity of 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 record does not sufficiently demonstrate that the beneficiary will manage a subordinate staff of professional, managerial, or

supervisory personnel, or that the beneficiary will be relieved from performing non-qualifying duties. The AAO is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title, no matter how significant his role is within the petitioning organization. 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.