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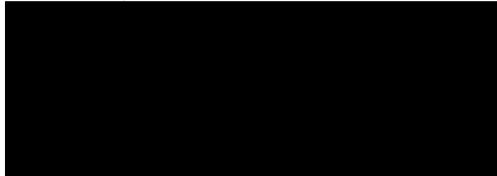
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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536



File: WAC 02 195 51514

Office: CALIFORNIA SERVICE CENTER

Date: **DEC 17 2003**

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:



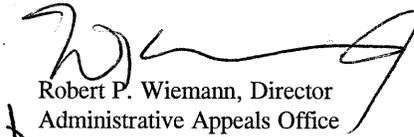
**INSTRUCTIONS:**

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 employment-based 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 is a nonprofit company incorporated in the State of California in 1977. It is a humanitarian relief and development organization. It seeks to employ the beneficiary as a financial analyst. 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 manager. The director determined that the petitioner had not established that the beneficiary would be employed in a managerial capacity for the petitioner.

On appeal, counsel asserts CIS incorrectly applied the law to the beneficiary's position and contends that the beneficiary's position is a functional manager position.

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 that 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. See 8 C.F.R. § 204.5(j)(5).

The issue in this proceeding is whether the beneficiary will perform primarily managerial duties for the petitioner.

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.

The petitioner initially indicated that, as the petitioner's financial analyst, the beneficiary would work closely with other finance staff to provide timely advice and expert recommendations to the petitioner's senior management on issues related to its funding operations. In addition, the petitioner indicated that the beneficiary had been given the task of overseeing the installation of upgrades of financial programs to the petitioner's computer system. The petitioner also provided its organizational chart showing the beneficiary as one of four financial analysts reporting to the field finance and budget manager.

The petitioner provided a detailed position description for the beneficiary's position of financial analyst. The position description included providing advice to the field finance and budget manager, providing advice to senior finance staff, and working with regional offices on issues arising from discrepancies, data accuracy, and resolving other issues. In addition, the beneficiary would provide training to finance staff, provide leadership for special projects as assigned, and consolidate the capital budget and approve capital requisitions. The position description also included duties relating to the upgrade of the petitioner's current financial reporting systems. The duties relating to this function included working with the petitioner's information management group on technical issues and managing the global training process for staff in-house and overseas.

The director requested additional evidence to support the petitioner's claim that the beneficiary's assignment would be in a primarily managerial capacity.

In response, the petitioner asserted that although the beneficiary did not supervise any staff, his position was a functional manager position. The petitioner reiterated that as a financial analyst the beneficiary provided advice and recommendations to the petitioner's management concerning specific areas of the petitioner's financial operations. The petitioner again stated that the beneficiary was and would be the project manager for the deployment of a financial software application for its office and offices abroad. The petitioner indicated that as the project manager the beneficiary would work with the information technology staff and the financial division to implement the software application and would resolve financial and system issues that affected deployment. The petitioner noted specifically that the beneficiary would be the primary resource person to train the petitioner's staff in the use of the software application and would instruct the overseas finance and budget managers on the installation and use of the software application.

The director determined that the petitioner's description of the beneficiary's duties were more indicative of an individual performing the work of a financial analyst rather than performing in a managerial capacity. The director concluded that the petitioner had not established that the beneficiary would be employed in a managerial or executive position.

On appeal, counsel asserts that the beneficiary is a financial analyst and system integration project manager. Counsel asserts that the beneficiary is responsible for managing the critical financial systems function and plans and supervises the process of converting the petitioner's financial system to a new financial software application. Counsel reiterates the petitioner's statements that the beneficiary will coordinate the efforts of the petitioner's personnel at all of the

national/country offices and regional offices to migrate and upgrade the financial accounting systems. Counsel states that the beneficiary is responsible for the implementation of the computer support infrastructure, providing guidance, training, and leadership to regional office coordinators, developing the training curriculum, and establishing and supervising the implementation of policies and guidelines for the standardization of financial reporting. Counsel asserts that once the new financial reporting system is in place, the beneficiary will manage its operations, identifying and implementing upgrades and continuing to integrate the system with other information databases used by the petitioner's offices. Counsel asserts that the beneficiary acts at a senior level with respect to the management of the petitioner's financial reporting systems. Counsel concludes by asserting that the beneficiary's primary activity is the management of the financial reporting system, including systems development, configuration processes, and ongoing training of personnel worldwide.

Counsel's assertions are not persuasive. The petitioner claims that the beneficiary is a functional manager rather than a staff manager and indicates that the beneficiary is a financial analyst and is responsible for managing the critical financial systems function. Although the beneficiary's responsibilities as a financial analyst and the beneficiary's responsibilities as the system integration project manager are complimentary, the beneficiary has disparate duties relating to the positions.

The petitioner initially described the beneficiary's position as a financial analyst. Coupled with the beneficiary's position as one of four financial analysts reporting to the field finance and budget manager, this description is more indicative of a position requiring the performance of tasks associated with the financial analyst position rather than managing a function for the petitioner. 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). As the director notes, the beneficiary gathers information, prepares reports, and then offers recommendations to the petitioner's field finance and budget manager. The record does not establish that this aspect of the beneficiary's duties is an assignment within the organization that is primarily in a managerial capacity.

Furthermore, the petitioner's claim that the beneficiary functions at a senior level, is undermined by the fact that the beneficiary is one of four financial analysts that report to a staff manager. Contrary to the statutory requirement at section 101(a)(44)(A)(iii), the record does not establish that the beneficiary functions at a senior level within the organization or with respect to the finance function. Instead, the

beneficiary appears to be at the lowest level of the finance department.

The financial analyst position description initially submitted also indicated that the beneficiary would be given the task of overseeing installation of upgrades to the petitioner's computer system, working with others to resolve technical issues, as well as managing the global training process for the system. The petitioner, in its response to the director's request for evidence, expanded on the duties of the project manager for the deployment of the financial software program and noted that the beneficiary would be the primary resource person to train the petitioner's staff in using the new software application. On appeal counsel indicated that the beneficiary would coordinate the efforts of the petitioner's personnel in the upgrade of its financial accounting systems.

Counsel's assertion that the beneficiary's primary activity is the management of the financial reporting system that includes systems development, configuration processes, and ongoing training of personnel worldwide, is not substantiated by the record. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record does not establish how much time the beneficiary will spend on this second aspect of his duties. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Ikea US, Inc. v. INS*, 48 F.Supp. 2d 22, 24-5 (D.D.C. 1999); see generally *Republic of Transkei v. INS*, 923 F.2d 175 (D.C. Cir. 1991) (discussing burden the petitioner must meet to demonstrate that the beneficiary qualifies as primarily managerial or executive); *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Moreover, the record does not sufficiently demonstrate that the beneficiary's duties of training personnel and resolving technical issues comprise the management of the petitioner's system upgrade project rather than performing the necessary operational tasks associated with integrating a new software application. Even if the record established that the beneficiary's duties as the systems integration project manager consisted of primarily managerial duties relating to an essential function, the record does not substantiate that this assignment was the beneficiary's primary assignment when the petition was filed. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Finally, neither counsel nor the petitioner has provided documentary evidence of the beneficiary's coordination of others in the effort to migrate and upgrade the petitioner's financial

accounting systems. Likewise, the record does not contain documentary evidence of the beneficiary's guidance, training, or leadership of others in the implementation of policies and procedures on the standardization of the petitioner's financial reporting.

In sum, the petitioner has identified a specific function allegedly managed by the beneficiary but has not adequately supported its claim that the beneficiary's primary assignment is managing an essential function of the petitioner.

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. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.