

**PUBLIC COPY**

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

**B4**

Identifying data deleted to  
prevent disclosure of information  
invasion of personal privacy

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



File: WAC 02 146 52746

Office: CALIFORNIA SERVICE CENTER

Date:

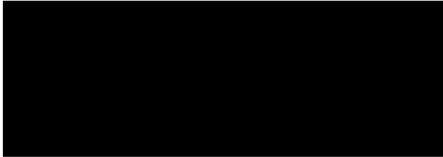
IN RE: Petitioner:  
Beneficiary:



**DEC 30 2003**

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 was formed in 1997 and is engaged in the process of re-engineering, adapting, and translating software and other information technology products for international markets. It seeks to employ the beneficiary as its global project 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 manager. The director determined that the record did not contain sufficient evidence to establish that the beneficiary would be employed in a managerial capacity for the petitioner.

On appeal, counsel asserts that the director's decision is arbitrary, capricious, and applies an improper standard of law.

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 stated:

[the beneficiary] will direct, manage, and oversee assigned localization projects of [the petitioner] in Los Angeles, California, including directing the work of other professional employees assigned to assist him with specific localization projects (localization engineers and translators), and will be responsible for each project's budget, scheduling, customer communications and customer satisfaction.

The petitioner also listed "core duties" to be performed by the beneficiary.

The director requested a copy of the petitioner's organizational chart. The director requested that the chart identify the beneficiary's position and all employees under his supervision by name and job title and include a brief description of their job duties.

In response, counsel for the petitioner indicated the responsibilities of a global project manager included leading the project and coordinating the localization efforts at the professional level, typically engineers in various global regions. Counsel attached a "localization vocabulary" chart including definitions of terms used in the industry, a "localization project sample" outlining a global project manager's duties on a typical localization project, and a "localization project" flow chart illustrating how the projects are executed. Counsel indicated that the information submitted was in lieu of the requested organizational chart and stated that the material submitted evidenced that the position involved direct management and control of an essential function and that the position is a senior position within the company.

The director determined that the description of the beneficiary's job duties did not provide an adequate sense of the beneficiary's daily activities and did not establish that the beneficiary had been performing in a managerial capacity. The director cited case law in support of his determination that the assertions of counsel did not constitute evidence. The director further determined that the petitioner had not established through the submission of independent, objective evidence that the beneficiary would be truly performing as a manager for immigration purposes.

Counsel asserts the director's decision contained errors of fact. First, counsel disagrees with the director's characterization of his statements regarding the beneficiary's prior grant of L-1A intracompany visa classification. Counsel indicates that he merely reminded the director that the beneficiary had previously been granted L-1A intracompany classification and that he is well aware that this petition is a separate matter. The AAO agrees that counsel merely referenced the L-1A nonimmigrant approval and noted that the L-1A approval was based on the beneficiary managing an essential function.

Second, counsel asserts that the director mischaracterizes the nature of the beneficiary's job and the stated job duties. Counsel takes issue with the director's conclusion that the description of the beneficiary's job duties does not provide a sense of the beneficiary's daily activities and does not establish that the beneficiary had been performing in a managerial capacity. Counsel re-lists six duties the director

listed in his decision and notes that the record included substantially more information regarding the beneficiary's role within the organization. The AAO agrees that the record contains a thorough description of the beneficiary's duties and contains an explanation of the beneficiary's role within the organization. The AAO will, however, not re-state the lengthy descriptions provided but will only reference particular duties as the duties relate to the beneficiary's management of an essential function.

Third, counsel contends that the director mischaracterized the evidence submitted in response to the request for evidence as new evidence, when the evidence was a summary of the evidence already on file. The AAO agrees that the response provided to the director's request for evidence was not "new" evidence but an elaboration and detailed explanation of the position of global project manager.

Counsel contends that the director's decision contains errors of law. Counsel asserts that the cited authorities for the proposition that "the assertions of counsel do not constitute evidence" are inapposite. Counsel contends that the uncontradicted evidence in the record establishes that the beneficiary is a functional manager. Counsel states that the beneficiary directs, manages, and oversees assigned localization projects, including directing the work of other professional employees, including corporate analysts, corporate contractors, linguists, and test and web engineers. Counsel states further that the beneficiary is responsible for the budget, scheduling, customer communications and customer satisfaction and will exercise authority to hire, fire, and recommend personnel promotions. Counsel concludes that directing, managing, overseeing, and supervising professional level employees including the authority to hire, fire, and recommend promotions is a prima facie example of a manager as defined in existing law. Counsel claims that the director's standard requiring the submission of independent, objective evidence that the beneficiary will truly perform as a manager is an incorrect standard of law. Last, counsel avers that the director has failed to articulate a legal basis for his denial. Counsel argues that the director does not acknowledge, much less discuss the direct, credible and probative evidence offered by the petitioner but simply dismisses it by concluding that the evidence is not sufficiently independent and objective.

Counsel's assertions are unpersuasive. 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). When examining the managerial or executive capacity of a beneficiary, CIS will look first to the petitioner's description of the beneficiary's job duties. See 8 C.F.R. § 204.5(j)(5). CIS will not rely solely on the assertions or conclusions offered by counsel to establish eligibility, without evidence that would substantiate those claims.

In addition, CIS will look at the totality of the record, including substantiating documentary evidence to confirm and otherwise validate the petitioner's description of the beneficiary's job duties. Because 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).

Counsel contends that the uncontradicted evidence in the record establishes that the beneficiary is a functional manager. The term "essential function" generally applies when a beneficiary does not supervise or control a petitioner's staff but instead is primarily responsible for managing a function. If the petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, as well as, establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive description of the beneficiary's duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function.

The petitioner has provided an elaborate description of the job duties of a global project manager's function. However, the record does not clearly set out the scope of the global project manager's position. For example, the record does not indicate whether the beneficiary is responsible for managing one project, making it more likely the beneficiary would participate in performing functions, or whether the beneficiary is responsible for managing several projects making it less likely the beneficiary would have time to perform functions. In addition, the record does not indicate whether the beneficiary is the organizations only global project manager or is one of several global project managers. Accordingly, the AAO cannot determine whether the beneficiary functions at a senior level within the organizational hierarchy as required by section 101(a)(44)(A)(iii) of the Act.

Counsel also suggests on appeal that the beneficiary is a staff manager and that directing, managing, overseeing, and supervising professional level employees including the authority to hire, fire, and recommend promotions is a prima facie example of a manager. However, despite the director's request, neither counsel nor the petitioner provides comprehensive descriptions for the professional-level positions the beneficiary supervises. Failure to submit requested evidence which precludes a material

line of inquiry shall be grounds for denying the application or petition. See 8 C.F.R. § 103.2(b)(14).

Counsel observes that the director did not discuss the evidence submitted in response to the request for evidence and failed to articulate a legal basis for his denial. The AAO acknowledges that the director's decision could have better articulated the deficiencies of the record. However, the record does not establish that the beneficiary's assignment will involve primarily managerial duties. The petitioner has not established that the beneficiary is responsible primarily for managing specific projects or whether the beneficiary primarily performs the operational tasks of the function. 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). The petitioner has not established that the beneficiary's assignment involves primarily supervising a staff of professionals. 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, supra; Republic of Transkei v. INS, supra; Matter of Treasure Craft of California, supra.*

In sum, the petitioner has provided some information through its counsel's more elaborate detail regarding the beneficiary's duties and the provision of a chart, but the record is not sufficient to establish that the beneficiary's primary assignment is managing an essential function of the petitioner.

Beyond the decision of the director, the petitioner has not established that the beneficiary's employment for the foreign entity was in a managerial capacity. The petitioner states that the beneficiary's overseas position was project manager in charge of localization projects. The duties of this position involved working with a global project manager, booking necessary resources to perform a project, maintaining internal communication, troubleshooting, budgeting and scheduling, acting as contact with customers, and serving as head of risk analysis and quality assurance. The petitioner does not provide sufficient detail to determine whether the beneficiary's overseas assignment was primarily performing managerial tasks or primarily performing operational tasks. The petitioner fails to quantify the time the beneficiary spent on various tasks and fails to demonstrate that the tasks were primarily managerial tasks. The petitioner has not established that the beneficiary's overseas assignment was primarily in a managerial capacity. For this additional reason the petition will not be approved.

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.