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

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File: [Redacted]

Office: TEXAS SERVICE CENTER

Date: MAR 17 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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]

PUBLIC COPY

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 employment-based visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of Texas. It is engaged in operating a dry cleaning establishment. It seeks to employ the beneficiary as its president and chief executive officer. 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 provided sufficient information regarding the beneficiary's position in the United States or overseas. The director determined, based on the lack of information in the record, that the beneficiary was not eligible for this visa classification.

On appeal, counsel for the petitioner does not submit a brief but asserts that the petitioner has provided all requested information for the record and requests that the petition be granted.

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. 8 C.F.R. § 204.5(j)(5).

The issue in this proceeding is whether the beneficiary will perform primarily managerial or executive 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.

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.

The petitioner initially provided a Form ETA 750, Application for Alien Employment Certification that described the beneficiary's job as follows:

Establish the goals and policies of U.S. subsidiary and exercise discretionary decision-making authority. Investigate and implement any and all business opportunities including the purchase of additional stores. Hire, supervise and dismiss supervisory and other personnel. Assume sole responsibility for all discretionary decisions affecting the company and its commitments.

The director requested that the petitioner provide a more detailed description of the beneficiary's job duties for the petitioner as well as the job titles and job descriptions of all employees under the beneficiary's supervision.

In response, the petitioner through its counsel asserted that the operation of the United States subsidiary "is clearly an 'essential function' of Petitioner." Counsel also asserted, "[The beneficiary] is totally responsible for managing the operation of the Petitioner. He supervises the subordinate employees; he corresponds with the parent company; he negotiates purchases and financing." Counsel further asserted that the beneficiary functioned at the highest levels of the organizational hierarchy. The petitioner also provided a list of seven purported employees. The petitioner noted on the list that the employees occupied the positions of "dropstore" manager, presser, plant manager, and cashiers.

The director determined that the petitioner had not provided all the requested information and that the record could not support a conclusion that the beneficiary was eligible for this visa classification.

On appeal, counsel asserts that the petitioner provided all the requested information and requests that the petition be approved.

Counsel assertion is not persuasive. 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). In the instant case, the petitioner

provided a position description that primarily paraphrases the definitions of executive and managerial capacity. See section 101(a)(44)(B)(ii) and (iii); section 101(a)(44)(A)(iii). Paraphrasing the elements contained in the executive and managerial definitions does not convey an understanding of what the beneficiary will be doing on a daily basis. Furthermore, the petitioner did not submit any evidence to establish that the beneficiary had actually or would actually conduct the broadly cast description of his duties, such as "[i]nvestigat[ing] and implement[ing] any and all business opportunities including the purchase of additional stores." 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's response to the director's request for a more detailed description of the beneficiary's job duties does not provide any further insight into the beneficiary's daily activities. Counsel's unsupported statement that managing the company's entire operations is an essential function is not sufficient. The beneficiary's duties in relation to the essential function must be described. As noted above, the record is deficient in providing a comprehensive description of the beneficiary's daily duties. Neither counsel nor the petitioner has provided an adequate description of the duties of the petitioner's employees subordinate to the beneficiary. Stating an individual's job title is not sufficient. Moreover, the record does not contain any independent documentation confirming the employment of petitioner's claimed personnel. See *Ikea US, Inc. v. INS*, *supra*. It is not possible to determine from the record that this beneficiary plans, organizes, directs, and controls the organization's major functions and work through other employees rather than the beneficiary, himself, primarily performing the organization's necessary operational tasks.

In sum, the record contains insufficient evidence to demonstrate that the beneficiary has been employed in a primarily managerial or executive capacity or that the beneficiary's duties will be primarily managerial or executive. The descriptions of the beneficiary's job duties are vague and, at most, indicate that a majority of his duties relate to the performance of basic operational tasks for the petitioner. Further, the record does not sufficiently demonstrate that the beneficiary has managed a subordinate staff of professional, managerial, or supervisory personnel who will relieve him 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 an executive or managerial title. The petitioner has not established

that the beneficiary at the time of filing the petition had been or will be employed in either a primarily managerial or executive capacity.

The second issue in this proceeding is whether the petitioner had provided sufficient evidence of the beneficiary's duties for the overseas employer. The petitioner again failed to provide a comprehensive description of the beneficiary's purported duties for the overseas company. The evidence of record does not overcome the director's determination on this issue.

Beyond the decision of the director, the record contains no information supporting the petitioner's ability to pay the beneficiary the proffered wage. See 8 C.F.R. 204.5(g)(2). Moreover, the record does not contain evidence demonstrating that the overseas entity actually paid for its claimed interest in the petitioner. As the petition will be dismissed for the reasons stated above, these issues are not examined further.

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.