

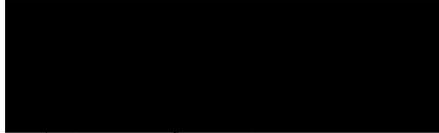
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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536



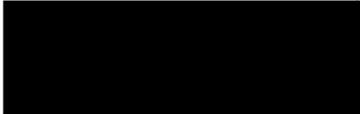
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Office: CALIFORNIA SERVICE CENTER

Date:

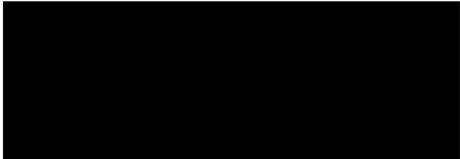
MAR 19 2003

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:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of California in April 1986. It is engaged in importing photomasks, which are used in the manufacturing process of computer chips. It seeks to employ the beneficiary as its manager of accounting and administration and its chief financial 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 established that the beneficiary would be performing in a managerial or executive capacity.

On appeal, counsel for the petitioner asserts that the Bureau erred in its decision. Counsel also submits declarations in support of this assertion.

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 stated the beneficiary's responsibilities as follows:

In his role as Chief Financial Officer [the beneficiary] achieved our target of producing financial statements in accordance with US GAAP and Japan GAAP. He has also performed budgeting and expenditure control, cost accounting, inventory control, fixed assets control, and overall management of managerial accounting staff. He is also responsible for cash flow management, currency fluctuation risk management, and data and resource management.

In sum [the beneficiary] has autonomous control over, and exercises wide latitude and discretionary decision-making in establishing the most advantageous courses of action for the successful establishment, management and direction of [the petitioner's] financial affairs.

The petitioner also attached the beneficiary's resume that included duties in addition to those stated in the letter supporting the petition. The beneficiary's resume stated that the beneficiary was also responsible for personnel administration, the information system management, and general administration.

The director requested copies of the petitioner's quarterly wage reports and payroll records.

In response to the director's request for evidence, the petitioner provided its California Form DE-6, Employer's Quarterly Report of Wages, for the quarter ending September 30, 2001. The California Form DE-6 listed the beneficiary and six other individuals. The petitioner also provided its organizational chart depicting a president, located in Japan, a senior vice-president in the United States, and four departments subordinate to the senior vice-president. The beneficiary was shown as the head of the human resources, accounting, and administration department and subordinate to the senior vice-president. The chart depicted one employee, an assistant, reporting to the beneficiary.

The director determined that the petitioner had not established a reasonable need for an executive because it was a small importing company and did not possess the organizational complexity to warrant having an executive. The director also determined that the beneficiary was acting as a first-line supervisor over one non-professional employee and was involved in the performance of routine operational tasks rather than managing a function. The director concluded that the petitioner had not established that the beneficiary would be performing as a manager or executive.

On appeal, counsel asserts that the beneficiary is a multinational manager and executive pursuant to the managerial and executive definitions. Counsel also asserts that the Bureau improperly considered the petitioner's staffing level. Counsel further asserts that the lack of supervision or management of other employees should not have been a basis for denial of the petition. Counsel also asserts that concluding the beneficiary performed functions rather than managing the functions was improper. Counsel disagrees with the subjective findings the director made regarding the United States entity's organizational complexity and business practices.

Counsel's assertions are 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). The petitioner has provided a broad description of the beneficiary's duties. The petitioner stated that the beneficiary "performed budgeting and expenditure control, cost accounting, inventory control, fixed assets control, and overall management of managerial accounting staff." This description, for the most part, is indicative of an individual performing the basic financial tasks associated with operating a company. 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). No evidence in the record supports the petitioner's statement that the beneficiary also manages the managerial accounting staff. 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). The petitioner's organizational chart only depicts an assistant under the beneficiary's supervision. The remaining portion of the description of the beneficiary's job responsibilities merely paraphrased certain elements of the definition of managerial and executive capacity. See 101(a)(44)(A)(i) and 101(a)(44)(B)(i) and (iii) of the Act.

The resume's description of the beneficiary as responsible "for cash flow management, currency fluctuation risk management, and data and resource management" is overly broad and does not convey an understanding of the beneficiary's duties in respect to these activities. It is not possible to determine from this general statement whether the beneficiary is performing executive or managerial tasks with respect to these activities or whether the beneficiary is actually performing the activities. As noted above, an employee who provides goods or services to an organization is not considered an executive or manager. See *Matter of Church Scientology International, supra*. Moreover, it is unclear from the record that the petitioner prepared the beneficiary's resume.

Contrary to counsel's assertion that the Bureau improperly considered the petitioner's staffing level, the Bureau may not only look at the petitioner's staffing but must do so in conjunction with the reasonable needs of the petitioner. Counsel's concerns regarding the director's subjective statements regarding the petitioner's type of business and its business practices are noted. The director, rather than making subjective statements, must articulate some reasonable basis for finding a petitioner's staff or structure unreasonable. Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). Even if the petitioner is a small business or engaged in sales or services, the petitioner may qualify for classification under section 203(b)(1)(C) of the Act. In this case, the director discussed the petitioner's organizational chart and noted that it did not show the beneficiary in an executive or managerial position. The chart depicted the beneficiary with only one assistant employee reporting to him. The organizational structure alone, indicates that the beneficiary is a first-line supervisor, rather than an executive or manager. Moreover, the petitioner did not provide comprehensive position descriptions for either the beneficiary or the beneficiary's assistant. The lack of detailed information in the record regarding the beneficiary's role for the petitioner and how this role encompasses executive or managerial duties makes it impossible to conclude that the beneficiary's role is an executive or managerial one. Given that the petitioner continues to operate with the beneficiary in this undefined role, without explicit executive or managerial duties, suggests that, at present, the petitioner does not reasonably require an executive or manager in the beneficiary's position.

Counsel appears to assert that the beneficiary is employed as a functional manager. The AAO notes counsel's assertions in regard to the director's determination that the beneficiary performs functions rather than managing them and that lack of supervision or management of employees should not be a basis for denial. However, the petitioner has not provided detailed information regarding the functions the beneficiary purportedly manages. The petitioner has not provided documentary evidence of other persons who actually perform the tasks associated with the functions the

beneficiary allegedly manages. The limited description of the beneficiary's duties, his title, and his resume describe a position associated primarily with the accounting tasks of the petitioner and, perhaps, with the human resources department of the petitioner. Without additional documentary evidence, the Bureau must conclude that the beneficiary is the individual who provides basic accounting services and some personnel administration for the petitioner.

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 general and are not supported by the record. 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 would be employed in either 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.

