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**U.S. Department of Homeland Security**

Bureau of Citizenship and Immigration Services

PUBLIC COPY

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

[redacted]

File: WAC 01 202 54027 Office: CALIFORNIA SERVICE CENTER Date: MAR 19 2003

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]

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 November 1996. It is engaged in business consulting, commercial printing and embroidery. It seeks to employ the beneficiary as its vice president. 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 submits an explanation for the confusing information submitted regarding the ownership of the petitioner's claimed subsidiary. Counsel also submits an explanation regarding the amount of time the beneficiary spends on his duties with the petitioner and the petitioner's claimed subsidiary.

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):
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> * * *
>
> (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-
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> i. manages the organization, or a department, subdivision, function, or component of the organization;
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> 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;
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> 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
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> 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-
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> 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 stated in the petition that the beneficiary was responsible for marketing and export. The petitioner also explained that its initial business endeavor in New York was not successful so that the petitioner purchased a 51 percent interest in a company engaged in the manufacture and sale of screen prints, embroidery, and sign and ad specialties.

The petitioner also included its Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return for the year 2000. The IRS Form 1120 indicated that officers were compensated in the amount of $64,000, but the form did not identify the officers. The IRS Form 1120 also indicated that salaries were paid in the amount of $13,961. The petitioner also provided the IRS Form 1120 for its claimed subsidiary for the year 2000. The IRS Form 1120 pertaining to the claimed subsidiary indicated that $136,570 was paid to officers. The officers were identified as the two owners of the claimed subsidiary prior to the petitioner's alleged purchase of the company and the two shareholders of the petitioner and a fifth individual. Schedule E of the claimed subsidiary's IRS Form 1120 indicated that the two previous sole owners devoted 100 percent of their time to the business and together owned 49 percent of the business. A third individual, apparently related to the two previous sole owners, was compensated at the highest rate for devoting 100 percent of her time to the business. The beneficiary, one of the two shareholders of the petitioner was identified on Schedule E as devoting 20 percent of his time to the business and owning 25.5 percent of the business. The petitioner's other shareholder was also identified as devoting 20 percent of his time to the business and owning 25.5 percent of the business.

The director requested a more detailed description of the beneficiary's duties for the United States company and the percentage of time the beneficiary spent on each of his duties. The director also requested the petitioner's organizational chart and a list of all employees under the beneficiary's supervision along with a brief description of their job duties and independent documentation of the source of their remuneration.

In response, the petitioner provided brief descriptions for the employees of the petitioner's claimed subsidiary. The petitioner

provided a more detailed description of the beneficiary's duties for the claimed subsidiary focussing on responsibilities relating to marketing (50 percent of his time), finance (20 percent of his time), and sales (30 percent of his time). The petitioner also indicated that the beneficiary as vice-president of the claimed subsidiary directed the chief executive officer and the chief financial officer. The petitioner also provided an organizational chart for the claimed subsidiary. The chart depicted the beneficiary, one of the petitioner's two shareholders, as vice-president at the top of the hierarchy with the chief financial officer and the chief executive officer reporting to him. The chart indicated that the president of the claimed subsidiary was the petitioner's other shareholder and that, although this individual was on the same level as the beneficiary, he had no employees reporting to him.

The petitioner also provided a description of the beneficiary's duties relating to the petitioner. The petitioner indicated that the beneficiary was vice-president and provided consulting services to companies, provided market research, and represented the company at trade shows. The petitioner stated that the beneficiary spent 60 percent of his time working for the petitioner's claimed subsidiary and 40 percent of his time on duties for the petitioner. The petitioner further indicated it employed a president, a beautician school trainer, and an assistant to the vice-president.

The director determined that the beneficiary could not be classified as an executive because its type of business did not require an executive because it was a small company that bought and sold products. The director also determined that the petitioner had only three employees other than the beneficiary; thus, the beneficiary would necessarily be involved in performing operational tasks. The director further determined that the beneficiary was a first-line supervisor over non-professional employees. The director finally determined that the petitioner had not provided evidence that the beneficiary was a functional manager. The director then noted that the employees of the petitioner's claimed subsidiary were not employees of the petitioner. The director noted further that the petitioner had presented confusing evidence regarding the beneficiary's time devoted to the petitioner's claimed subsidiary. The director finally noted that the record did not support the petitioner's claim that its claimed subsidiary and the beneficiary's overseas employer had a qualifying relationship.

On appeal, counsel for the petitioner explains that the IRS Form 1120 submitted by the petitioner's claimed subsidiary contained errors and that amended returns had been filed with the IRS. The petitioner submitted a copy of the amended 2000 return as well as an amended return for 2001. The petitioner has not submitted evidence that the amended returns have been filed with the IRS. Counsel reiterated that the beneficiary devoted 60 percent of his

time to the claimed subsidiary and that the petitioner, not the petitioner's two shareholders owned 51 percent of the petitioner.

Counsel's explanations are not sufficient to address the ineligibility of the beneficiary for this visa classification. 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 relating to the petitioner. The petitioner indicates that the beneficiary provides consulting services to companies, provides market research and represents the company at trade shows. These duties are more indicative of an individual providing basic operational services for the petitioner rather than directing or managing 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).

The petitioner has not established that the beneficiary's duties for its purported subsidiary contribute to the eligibility of the beneficiary for this visa petition. First, the petitioner's claimed subsidiary is not the organization in interest in this petition. Second, the petitioner failed to provide sufficient documentation to establish its legal association with the claimed subsidiary. The petitioner did not provide stock certificates, agreements relating to the purchase of the claimed subsidiary, or other independent documentation to establish that the claimed subsidiary and the petitioner are associated together in joint action on any subject or subjects. Moreover, the petitioner failed to provide evidence of payment for its purported interest in the claimed subsidiary. Third, the beneficiary's duties for the petitioner's claimed subsidiary, while taking up the majority of his time, do not appear to be duties that are executive or managerial. The petitioner has not provided evidence that employees, other than the beneficiary, are engaged in marketing, finance, and sales. Thus, the record does not support the petitioner's claim that the beneficiary is relieved from performing non-qualifying duties for the petitioner's claimed subsidiary. 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).

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.