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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]

MAY 06 2003

FILE: WAC 02 032 53117 Office: CALIFORNIA SERVICE CENTER Date:

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]

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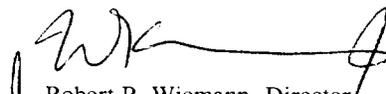
INSTRUCTIONS:

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 preference visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration.

The petitioner was incorporated in the year 2000 in the State of Nevada and is claimed to be an affiliate of [REDACTED], located in Pakistan. The petitioner is engaged in the sale of apparel. 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 had been or would be employed in a managerial or executive capacity.

On appeal, counsel for the petitioner asserts that the director's decision is factually flawed and contrary to the law. Counsel states that the decision is based "purely on speculation and a misapplication of the facts."

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.

Section 101(a)(44)(C) of the Act states, in pertinent part:

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity merely on the basis of the number of employees that the individual supervises.

In his decision, the director made the following observations that lead to the denial:

[T]he petitioning entity does not have a reasonable need for an executive because they are merely an import/wholesale and distributor business. This type of business does not require or have a reasonable need for an executive because *all they do is buy and sell products.* (Emphasis added) Additionally, it is contrary to common business practice and defies standard business logic for such a company with six employees to have an executive, let alone three.

The director also stated that "[f]or a company of this nature to have three out of three employees as executives/managers is illogical." He concluded that "[b]ecause the company only [sic] will only have two other employees, the beneficiary will have to be assisting in the performance of the numerous menial tasks involved in importing and distributing because there aren't enough employees left to perform them."

These comments are inappropriate. The director should not hold a petitioner to his undefined and unsupported view of "common business practice" or "standard business logic." The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding. Although the Bureau must consider the reasonable needs of the petitioning business if staffing levels are considered as a factor, the director must articulate some reasonable basis for finding a petitioner's staff or structure to be unreasonable. Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In the instant case the director based the denial, in large part, on the size of the petitioner's staff. Such reasoning is contrary

to established law and because the director fails to discuss any of the beneficiary's described duties, there is no indication which tasks in particular the director perceives as "menial." Furthermore, counsel properly points out that the director erred in determining that the petitioner only has three employees. The petitioner actually claimed a total of five employees on the petition.

The director also focuses on employee salaries and concludes that "the employees were not receiving the remuneration in the professional capacity and cannot be considered as such, no matter what their job title." While salaries may be a factor for consideration, the proposed salary, by itself, does not establish or disprove the managerial or professional nature of employment. The description of job duties and the complete circumstances of the proposed employment must be reviewed to determine the nature of a particular job. In the instant case, the director fails to discuss the employees' actual job descriptions, which the petitioner provided in compliance with the Bureau's request for additional evidence, dated February 15, 2002.

After a thorough review of the record, it is concluded that the denial is deficient as it is based on the director's vague definitions that are unsupported by actual laws or regulations. As the decision is void of a factual analysis of the evidence of record, there is no indication that the job descriptions and other relevant documentation were properly considered in rendering the final decision. The director made no mention either of the descriptions of the beneficiary's duties, or the duties of his subordinates. Accordingly, the case will be remanded for proper review and analysis of the record in its entirety. The director is to consider all aspects of the petitioner's eligibility, including the existence of a qualifying relationship and whether the petitioner has the ability to pay the beneficiary's proffered wage. A final decision should be rendered only after the director has given proper consideration to all relevant factors.

ORDER: The decision of the director, dated June 4, 2002, is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.