

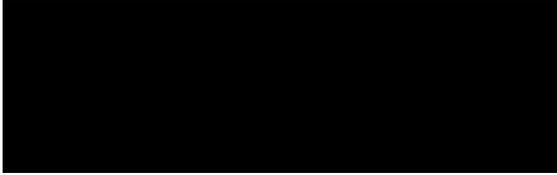
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U.S. Department of Homeland Security
Citizenship and Immigration Services

B4

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass. Ave., 3rd Floor
425 Eye Street N.W.
Washington, D.C. 20536



NOV 11 2003

FILE: EAC 00 126 52394 Office: VERMONT SERVICE CENTER Date:

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:



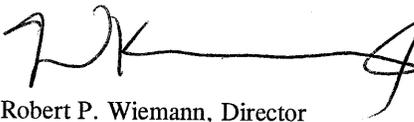
INSTRUCTIONS:

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 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 preference visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Although the petitioner does not specify the type of qualifying relationship it has with a foreign entity, the evidence of record suggests that it is functioning as a branch of United [REDACTED], located in Hong Kong. The petitioner is engaged in the business of providing fully integrated logistics services for international containerized cargo to and from Asia, North America, and Europe. It seeks to employ the beneficiary as its process 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 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 submits a statement refuting the director's findings.

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.

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 two issues in this proceeding are whether the beneficiary had been employed abroad in a managerial or executive capacity and whether the U.S. petitioner would employ her in a managerial or executive capacity.

In the initial filing, the petitioner stated the following regarding the beneficiary's duties abroad:

As Team Leader [the beneficiary] was responsible for ensuring that all customer needs were met. To this end, she was instrumental in the development and management of processes to implement USC's system, on a customer to customer basis, to meet customer needs. Moreover, [the beneficiary] was one of only two individuals at USC Hong Kong that was a process expert with specialized knowledge in our China customer service functions.

In the performance of her tasks, she provided day to day supervision of four staff members and had discretion over personnel functions in our China offices. She participated directly in the resolution of issues between Chinese vendors, other Asian vendors

and offices, USC Hong Kong, USC United States, and USC customers.

The petitioner also provided the following description of the beneficiary's prospective duties in the United States:

[The beneficiary] is responsible for explaining and presenting to customers USC's services and the manner in which USC handles and transports their freight. In fulfilling her duties in this regard, [she] is accountable for ensuring that USC meets the customers' requirements and specifications for service. In that regard she is also responsible for managing inquiries from vendors and shippers regarding their export customs issues, cargo delivery procedures, and exception resolution. In essence, [the beneficiary] oversees all customer service related functions. . . .

In addition, [she] is responsible for coordinating operational processes between USC offices worldwide and implementing new projects between USC offices, including a quality improvement program. . . .

Moreover, as Process manager, she is also responsible for designing and arranging orientation and training courses for both USC staff and customers. . . .

[The beneficiary] regularly meets with other USC personnel and managers to coordinate and promote corporate goals, functions, and interests. She represents USC's concerns and interests relating to servicing customers and contributes to the development of strategic corporate business activity and policies and compliance therewith. Further, she works directly with one of USC's most profitable partnerships' (Toys R Us) senior management to develop necessary changes to improve Toys R Us's operations and reduce costs.

On August 31, 2000, the director instructed the petitioner to submit, in part, a detailed description of the beneficiary's job duties and the job duties of his subordinates. The petitioner was asked to provide the minimum education requirements of the beneficiary's subordinates and indicate how those requirements are necessary to perform their respective duties.

The petitioner responded by providing an organizational chart, which indicates that the beneficiary works in the department that is managed by the director of operations. The beneficiary's immediate supervisor, manager of the petitioner's Toy's R Us "desk," is supervised by the director of operations, while the beneficiary, whose title on the chart is customer support for Toys R Us, has no immediate subordinates.

The petitioner provided the following list of the beneficiary's primary responsibilities:

- Co-ordination between customers and Asia offices
- Facilitating the linkage of daily operation process between Asia offices
- Ensuring customer satisfaction
- Oversee and monitor Asia operation process to ensure customer's requirements are fulfilled
- Project Implementation
- Service quality control
- Problem resolving/handling exception
- Supporting account activities/TRU desk
- Regularly generate Log-Net report to manage/monitor operations
- System research for customer inquiries

Although the petitioner has provided a number of position descriptions for the beneficiary's co-workers, the beneficiary herself has no subordinates; therefore, none of the detailed position descriptions will be addressed.

The director denied the petition, concluding that neither the beneficiary's duties abroad, nor her duties in the United States can be classified as managerial or executive. The director further noted that CIS (previously the Immigration and

Naturalization Service) erred in approving the prior L-1A petition to classify the beneficiary as an intracompany transferee.

On appeal, counsel submits a brief asserting that the beneficiary is a senior manager who functions as an operations manager. Counsel neither acknowledged nor explained why, in the petitioner's previously submitted organizational chart, the beneficiary was assigned a different job title, which did not reflect managerial status. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence; attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Counsel states that "[d]ue to the relatively small size of [the] Petitioner combined with its thin management structure . . . it is inevitable that all senior management members shall need to perform certain tasks of an ordinary nature from time to time in addition to their administrative and management duties." Counsel also admits the petitioning entity has no secretaries and "very few support staff to assist the senior management members in New Jersey." Counsel justifies this "hands-on" approach by directing attention to the petitioner's economic growth. However, the reasonable needs of the petitioning organization do not override the petitioner's burden of establishing that the beneficiary performs primarily managerial duties. To the contrary, if the petitioner's reasonable needs are such that the beneficiary is required to be directly involved in running its daily operations, that factor in and of itself suggests that the petitioner has no need for a primarily managerial or executive position. In the instant case, the petitioner readily admits that the beneficiary is required to handle such non-qualifying tasks as track shipping, compiling reports, and addressing customer inquiries. There is no question, therefore, that the beneficiary does not *primarily* focus on managerial or executive duties.

In examining the executive or managerial capacity of the beneficiary, CIS 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 readily admits, via the description of the beneficiary's duties, that the beneficiary is required to perform a significant number of non-qualifying duties on a daily

basis. Consequently, CIS is led to conclude that the beneficiary is performing as a professional or "staff officer," but not as a manager or executive.

On review, the record contains insufficient evidence to demonstrate that the beneficiary has been and will be employed in a primarily managerial or executive capacity. While the petitioner claims that the beneficiary manages a number of supervisory employees who are located in Hong Kong, the petitioner provides no specific explanation as to how the beneficiary manages employees who actually perform work thousands of miles from where the beneficiary herself is located. Furthermore, the fact that the beneficiary continues to perform a number of non-qualifying duties suggests that her duties are not primarily of a managerial or executive capacity. CIS is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title. The petitioner has not established that the beneficiary has been or will be employed in 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.