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

ADMINISTRATIVE APPEALS OFFICE  
BCIS, AAO, 20 Mass. Ave., 3rd Floor  
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Washington, D.C. 20536

**PUBLIC COPY**



NOV 19 2003

FILE: WAC 02 090 50384 Office: CALIFORNIA 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:



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

The petitioner was incorporated in 2000 in the State of California and is claimed to be a subsidiary of First Conferences Limited, located in the United Kingdom. The petitioner is engaged in the business of arranging trade conferences and events. It seeks to employ the beneficiary as its chief executive officer (CEO). 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. The director also determined that the petitioner failed to establish the existence of a qualifying relationship with a foreign entity.

On appeal, counsel submits a statement and additional evidence to support the petitioner's claim.

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 which 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.

The first issue in this proceeding is whether the beneficiary has been and will be performing managerial or executive duties.

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.

In the initial filing, the petitioner described the beneficiary's prospective duties as follows:

As Chief Executive Officer of FCC, [the beneficiary] has been responsible for managing FCC's operations. In particular, [the beneficiary] has been providing high-level management consulting services to a third party media organization . . . . In addition, [he]

has been targeting potential customers and sponsor companies, developing advertising campaigns and analyzing the response to those campaigns. [The beneficiary] has also been responsible for all the senior management functions of the US office, including defining and implementing corporate strategies, overseeing the day-to-day operations of the company, supervising product development and marketing, and coordinating the market research required to determine the most appropriate conference topics and locales as well as the size and level of the market. Finally, [the beneficiary] has been responsible for developing and overseeing the activities of the company's professional staff.

On March 5, 2002 the director instructed the petitioner to submit, in part, its organizational chart identifying the beneficiary's position, a more detailed description of the beneficiary's job duties indicating the percentage of time spent performing each duty, and a list of all of the employees under the beneficiary's supervision. The petitioner was asked to provide brief job descriptions, educational levels, and the salaries or wages of all of the beneficiary's subordinates.

In response to the above request, the petitioner provided a breakdown of the beneficiary's job duties and the percentage of time spent performing each duty. As the director enumerated this list of duties in its entirety, the AAO need not reiterate that list in this decision. The petitioner also provided a separate list of the beneficiary's day-to-day duties including the following:

1. Developing sponsor customer base for events.
2. Market research for new projects (awards ceremony, new exhibition project).
3. Overseeing day-to-day operations (including human resources and administration).
4. Defining and monitoring corporate strategy and financial targets and liaising [sic] with FCL management.

Although the petitioner was requested to provide an organizational chart describing its own hierarchy, the chart provided mostly consists of employees that work out of the London office, not the office of the petitioner. The petitioner merely indicates that these employees, regardless of their locale, report to the beneficiary in the United States. The chart indicates that the petitioner has two full-time employees including the beneficiary and a conference organizer. Although the chart indicates that the petitioner employs an event organizer and an administrative assistant, these two employees work on a part-time basis.

The director denied the petition, concluding that the beneficiary's job duties do not suggest that the beneficiary's duties will be primarily managerial or executive. The director noted that other than a conference organizer, "there appears to be no other assistants or clerical staff in the beneficiary's line on the organizational chart." This observation is incorrect, as the organizational chart does, in fact, list a full-time conference organizer, a part-time event organizer, and an administrative assistant as being directly under the beneficiary's supervision. However, the petitioner's payroll records, as properly noted by the director, indicate that the beneficiary's only subordinate employee is the full-time conference organizer. There is no documentation to confirm employment of the two part-time positions that are listed in the organizational chart. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and 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).

In the instant case, the petitioner has provided no evidence or explanation to reconcile the conflicting claims regarding the number of employees under the beneficiary's supervision. In addition, the payroll records indicate that the beneficiary and his subordinate are located thousands of miles away from one another. Although the beneficiary is located in California, where the petitioner was incorporated, his subordinate works out of New York. The director concluded that this information

suggests that a good portion of the beneficiary's duties would have to be routine, day-to-day tasks that cannot be classified either as managerial or executive.

On appeal, counsel submits a brief reiterating the list of duties previously submitted in response to the request for additional evidence and offers excerpts from the Department of Labor's *Occupational Outlook Handbook* that describe the duties, working conditions, and required training for executives. However, CIS must look to the Act for the definitions of "executive" and "managerial capacity," both of which have been created by Congress. The task for the director and the AAO in the instant case is to determine whether the beneficiary's described duties, as provided by the petitioner, fall under the applicable statutory definitions. The fact that an internet database defines the beneficiary's duties as either managerial or executive is irrelevant when suggestions in the database are at odds with applicable statutory law.

CIS will look first to the petitioner's description of the job duties to determine whether the beneficiary is acting in a primarily executive or managerial capacity. See 8 C.F.R. § 204.5(j)(5). In the instant case, the description of duties does not include a description of any subordinate positions that would perform the essential functions of the petitioner's business or the beneficiary's duties. Although the petitioner claims that 20% of the beneficiary's duties involves dealing with personnel issues, the record documents only one employee, other than the beneficiary, and that employee, as already established, works thousands of mile away from the beneficiary. Therefore, it is unclear what personnel issues could occupy such a large portion of the beneficiary's time when, as of yet, the petitioner's staff consists of only two people, one of whom is the beneficiary. Although the petitioner claims two additional part-time employees on its organizational chart, and indicates that it has a number of private contractors, there is no evidence to support these claims. As previously established, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, the petitioner indicated that the beneficiary's daily duties include developing a customer base and conducting market research for new projects which, as indicated in the

initial description of duties, includes developing advertising campaigns. These duties are best attributed to sales and marketing personnel, not to a manager or executive. Although it is understandable, based on the petitioner's lack of support personnel, that the beneficiary is required to perform, rather than just manage, the essential tasks of the petitioning organization, the fact that the beneficiary's duties are not primarily managerial or executive leads the AAO to conclude that the beneficiary is performing as a professional or "staff officer," but not as a manager or executive. 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 evidence of record indicates that the petitioner has not established that the beneficiary has been or will be employed in a primarily managerial or executive capacity.

The second issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between it and a foreign entity.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

*Affiliate* means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign

entities for purposes of this immigrant visa classification. *Matter of Church of Scientology International*, 19 I&N Dec. 593 (BIA 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986) (in nonimmigrant visa proceedings); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982) (in nonimmigrant visa proceedings). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church of Scientology International supra* at 595.

The director concluded that the record lacks evidence to establish that the foreign entity supplied the initial capital in exchange for ownership of the U.S. petitioner.

On appeal, counsel asserts that the director's conclusion regarding the issue of a qualifying relationship was arbitrary and erroneous and submits a definition for "stock certificate" as defined in an internet investment glossary. However, the fact that an internet glossary defines a stock certificate as a "document reflecting legal ownership" does not override the regulation at 8 C.F.R. § 204.5(j)(3)(ii), which specifically allows the director to request additional evidence in appropriate cases. As ownership is a critical element of this visa classification, the Director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. In the instant case, the director's request was not limited to stock certificates and stock transfer ledgers. The director specifically instructed the petitioner to also submit copies of the original wire transfers, cancelled checks, and even deposit slips detailing monetary amounts for the stock purchase. While the petitioner submitted a copy of an electronic fund transfer, the director properly concluded that the fund transfer took place one year after the petitioning organization was established and, based on the corresponding bank statement, the transfer was made for the purpose of setting up payroll. Therefore, the wire transfer submitted does not establish the parent company's ownership of the petitioner's stock at the time the petitioner was established.

However, counsel also directs the AAO's attention to the foreign entity's audited financial statement for the year ending August

31, 2001. A review of the submitted evidence indicates that the financial statement was audited in accordance with the United Kingdom Auditing Standards. Counsel directs the AAO's attention to page 12 of the financial statement, which documents the foreign entity's investment for all of the petitioner's issued stock. It is concluded that the petitioner has submitted sufficient evidence to overcome this portion of the director's objection. However, the petition cannot be approved as the petitioner has failed to establish that the beneficiary has been and will be performing primarily managerial or executive duties.

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.