

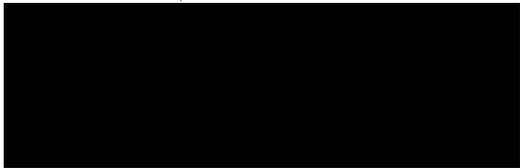
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

PUBLIC COPY



NOV 19 2003

FILE: [Redacted] 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:



**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 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 matter will be remanded for further consideration.

The petitioner was incorporated in 1997 in the State of California and is claimed to be a subsidiary of Xi'an Pharmaceutical Factory, located in China. The petitioner is engaged in the business of pharmaceutical sales. 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.

In her decision, the director made the following observations which lead to the denial:

. . . the petitioning entity does not have a reasonable need for an executive because they are merely a small import/export 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 small company to have an executive, let alone three.

* * *

. . . Because the company only [sic] will only have four other employees, the beneficiary will have to be assisting in the performance of the numerous menial tasks involved in importing/exporting because there aren't enough employees left to perform them.

The director's analysis is incorrect. The director should not hold a petitioner to her undefined and unsupported interpretation of "common business practice" or "standard business logic." The director should instead apply the statute and regulations to the facts presented by the record of proceeding. Although CIS 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 fails to indicate which of the beneficiary's tasks the director perceives as "menial."

The director also concluded that the employees under the beneficiary's supervision could not be deemed professionals "because they are not managing professional employees." (Emphasis added in original). The definition of managerial capacity contained in section 101(a)(44)(A) of the Act applies to the beneficiary of the present petition and not to his subordinate employees. Based on the director's reasoning, no beneficiary would qualify as a manager if the organization's ultimate, lower tier subordinate was not a professional employee, regardless of how many layers of management lay between the beneficiary and the non-professional employee. According to the director, each tier of management would be disqualified as the first-line supervisor of non-professional staff. In the present matter, the organization is structured so that the second tier, first-line supervisor relieves the beneficiary from supervising non-professional employees. Consequently, the beneficiary may not be disqualified based on the conclusion that he does not manage professional employees where the sole basis for such reasoning is that the second tier of managers supervises the petitioner's non-professional employees.

Lastly, the director stated that the beneficiary's subordinates could not be deemed professional "because their positions are not so complex as to require individuals with college degrees." However, the director provides no clear definition of what is deemed to be "complex," a standard that is undefined and unsupported by any statutes or regulations. Furthermore, the director focuses on employee salaries and concludes that based on the Department of Labor's *Occupational Outlook Handbook* the managerial employees are "not receiving remuneration in the professional capacity and can not 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 CIS's request for additional evidence, dated November 31, 2001.

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, which are unsupported by any actual laws or regulations. As the decision is devoid 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.

ORDER: The decision of the director, dated March 8, 2002, is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.