

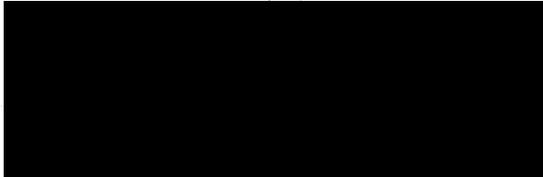
U.S. Department of Homeland Security

Citizenship and Immigration Services

B4

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

PUBLIC COPY



NOV 19 2003

FILE: WAC 02 206 50168 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**

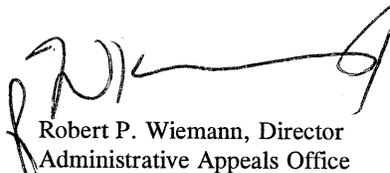
INSTRUCTIONS:

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 Director, California Service Center, denied the preference visa petition. 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 2001 in the State of California and is claimed to be a wholly-owned subsidiary of [REDACTED] located in the United Kingdom. The petitioner is engaged in the business of qualitative market research. 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 his decision, the director made the following observations, which lead to the denial:

It is impractical to think that a company with two (or three) executives needs two vice presidents to lead them. That is what is being said when [the beneficiary] is called a multinational manager. It is also contradictory because the other vice president is also being petitioned for the same category They can't both be the one critical position needed by this company. The factor which can't be overlooked is the number of individuals working for this company and the fact that they are all executives.

The director's comments are inappropriate as they focus almost entirely on the size of the petitioner's organization. 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). Furthermore, 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 director's denial does not suggest that the director gave any consideration either to the beneficiary's job description, or to the job descriptions of his subordinates, even though the director specifically requested both pieces of information in the request for additional evidence. In fact,

the director concluded that the petitioner provided no exhibits that outlined the beneficiary's job duties. A thorough review of the documentation submitted suggests that the director's conclusion was incorrect, as the petitioner provided the beneficiary's specific list of job duties, both with the initial filing (Exhibit 9) and subsequently in the response to the request for additional evidence (Exhibit 5). There is no evidence that the director considered either list of duties prior to issuing a denial.

Furthermore, the director determined that the petitioner claims that the beneficiary's subordinates are executives. However, that determination was clearly based on the job titles of the said subordinates. There is no evidence that the director considered these employees' job descriptions, which were provided in response to the request for additional evidence. It is a well-established principle that CIS does not deem someone a manager or executive simply because they possess a managerial or executive title. In the instant case, the director did just that by considering only the job titles of the beneficiary's subordinates without actually analyzing their list of job duties. In fact, the petitioner explains on appeal that giving executive job titles to researchers is common to the marketing research industry, even though these positions would not qualify under the statutory definition of "executive."

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 of the law, which are unsupported by any 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. The director shall review all documentation submitted up through, and including, the appeal in rendering a new decision. Accordingly, the case will be remanded for proper review and analysis thereof.

ORDER: The decision of the director, dated December 5, 2002, is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.