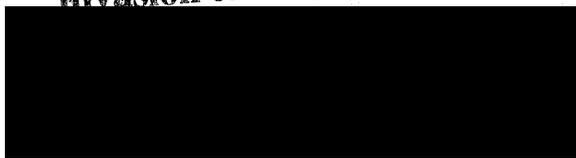


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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO 20 Mass. 3/F  
425 I Street N.W.  
Washington, D.C. 20536



File: [Redacted] Office: VERMONT SERVICE CENTER Date: OCT 23 2003

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)

IN BEHALF OF PETITIONER:  
[Redacted]

**PUBLIC COPY**

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 employment-based 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.

The petitioner is a New Jersey corporation that claims to be engaged in the international air and ocean freight transportation business. It seeks to employ the beneficiary as its vice-president and general manager. Accordingly, it seeks 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 would be employed in either a managerial or executive capacity.

On appeal, counsel for the petitioner asserts that the director's decision is contrary to the facts of the case, is contrary to the weight of the evidence submitted, and is clearly inconsistent with the documentation submitted in support of the petition.

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.

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.

The issue in this proceeding is, whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity for the United States entity.

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 petitioner initially stated the beneficiary's job duties as follows:

As the Vice-President and General Manager of this company, [the beneficiary] will have responsibility for overseeing, through the administration of subordinates, all aspects of the company's operations. This will include establishing hiring and firing and promotional policies, major financial and corporate budgetary decisions, major decisions concerning advertising, marketing, sales and other promotional activities of the corporation to expand upon its market share, increase its level and volume of business and increase its corporate income and profitability. These activities will be accomplished through the setting and establishment of short term and long term corporate goals, policies and objectives that [the beneficiary] will develop.

The petitioner also provided its Internal Revenue Service (IRS) Form W-3, Transmittal of Wage and Tax Statements for 1999. The Form W-3 revealed that the petitioner had employed nineteen individuals throughout the year of 1999 and had paid salaries in the amount of \$484,287.57. The salaries for individuals ranged from \$346.15 to \$63,461.55. The petitioner also provided the titles to eighteen job positions and the name of the individual employed in each position. The petitioner also provided its organizational chart depicting the positions of president, general manager, and vice-president. The chart also indicated that the petitioner was comprised of an accounting department, an operations department, a sales department, and a computer department. Each department had a manager and the sales and operations department also included an assistant manager. The chart does not identify the number of remaining positions for the other individuals employed by the petitioner.

The director requested additional information including a complete position description for all of the petitioner's employees including a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis. The director also requested evidence regarding any contractors the petitioner used including the compensation paid to the contractors.

In response, the petitioner provided brief job descriptions for 14 of its employees, but did not include a breakdown of the number of hours devoted to each of the employees' job duties. The petitioner simply noted that each employee spent 40 hours per week performing the duties described. The job titles and position descriptions for the majority of the employees do not correspond to the positions

noted on the previously submitted organizational chart. The petitioner also provided two IRS Miscellaneous Income Forms 1099 issued to two individuals and totaling \$146,849.14. The petitioner further included its first quarter and second quarter WR-30 Forms, Employer Report of Wages Paid for 2000. These forms also reflected that the petitioner employed 14 individuals.

The director notes that the petitioner had not provided CIS with a complete position description for all its employees including an hourly breakdown of their duties on a weekly basis. The director also notes that the petitioner employed eight individuals with managerial or executive titles. The director determined based on the gross receipts depicted on the petitioner's 1998 income tax return, that the petitioner was not functioning in a manner that would require the services of a ninth managerial employee. The director concluded that the petitioner had not established that the beneficiary would be employed in either a managerial or executive capacity.

On appeal, counsel for the petitioner questions the director's reliance on a three-year-old company tax return in light of the evidence submitted regarding the number of employees on its payroll. Counsel asserts that the beneficiary will give direction to and manage a substantial number of employees and has been entrusted with job duties that are clearly managerial. Counsel also contends that the director's conclusion that every employee is a "manager" is inconsistent with the documentation and information submitted. Counsel also states that the petitioner submitted position descriptions for each employee including the number of hours per week spent on those job duties.

Counsel's assertions are not persuasive. 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 initial petition, the petitioner submitted a broad position description that refers, in part, to duties such as "establishing hiring and firing and promotional policies, major financial and corporate budgetary decisions, major decisions concerning advertising, marketing, sales and other promotional activities." The AAO is unable to determine from these statements whether the beneficiary will be performing managerial or executive duties with respect to these activities or whether the beneficiary is actually performing the activities.

The petitioner also stated that the beneficiary would be responsible for "overseeing, through the administration of subordinates, all aspects of the company's operations." This statement is too general to convey an understanding of exactly what the beneficiary will be doing on a daily basis.

The petitioner further stated that the beneficiary would be responsible for "the setting and establishment of short term and long term corporate goals, policies and objectives." This

statement merely paraphrases one of the elements contained in the statutory definition of "executive capacity" without describing the actual duties of the beneficiary with respect to the daily operations. Moreover, the petitioner throughout the supporting papers asserts only that the beneficiary will be employed in a "managerial capacity" and does not contend that the beneficiary will also be employed in an "executive capacity."

Furthermore, the petitioner has provided inconsistent information regarding its employee positions. The organizational chart and employee list with position titles submitted with the petition differs from the position titles and descriptions provided in response to the request for evidence. 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 (BIA 1988). Without a clear organizational structure, that shows the hierarchy of the positions, the AAO is unable to determine whether the beneficiary manages a subordinate staff of managers, supervisors or professionals, or manages an essential function.

We also note that counsel has misread the director's decision regarding the number of managers employed by the petitioner. The director noted that the petitioner employed eight individuals with managerial or executive titles out of the 14 individuals employed, not that all 14 employees had managerial or executive titles. Upon review, it appears that the petitioner has endowed nine individuals with managerial or executive titles. In either case, the petitioner has not provided sufficient consistent information to overcome the director's implied conclusion that the petitioner would not generate sufficient revenue to support eight or nine managerial/executive positions. Likewise, counsel has misunderstood the director's request to provide position descriptions that include the number of hours per week an employee spent on their various job duties. The petitioner's blanket statement that each employee spent 40 hours per week working for the petitioner does not provide the detail required to establish that an individual is primarily employed in an executive or managerial capacity.

Upon review, the petitioner has not provided sufficient consistent evidence to conclude that the beneficiary will be employed in a primarily managerial or executive capacity. The descriptions of the beneficiary's job duties are general and fail to describe his actual day-to-day duties. The record does not adequately demonstrate that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties. CIS is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses an executive or managerial title. The petitioner has not

established that the beneficiary has been employed in either a primarily managerial or executive capacity.

Beyond the decision of the director, the petitioner has not established that a qualifying relationship exists between the petitioner and the claimed parent company. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities, in that the petitioning company is the same employer or an affiliate or subsidiary of the overseas company.

The petitioner initially identified a foreign entity, Taiwan Welgrow International Forwarding Co., Ltd. as its parent company. The petitioner stated that this foreign entity owned 100 percent of its outstanding stock. The petitioner also submitted its share certificate number one issuing 1000 shares to an individual. This same individual is identified in the petitioner's IRS Forms 1120, U.S. Corporate Income Tax Returns as the owner of 100 percent of the petitioner's shares. The director specifically requested clarification of this discrepancy in his request for evidence. In response, the petitioner submitted a different share certificate number one issuing 1000 shares to the purported parent company.

The petitioner's indiscriminate use of its share certificates draws into question the legitimacy of the organization and any purported qualifying relationship. Upon review, the petitioner has not established that a qualifying relationship exists between the petitioner and the claimed foreign entity. 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, supra*. For this additional reason, the petition will not be approved.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.