



U.S. Citizenship
and Immigration
Services

B4

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: SEP 14 2004

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:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The director denied the employment-based preference visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a Florida corporation that seeks to employ the beneficiary as its president. The petitioner, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition because the proffered position in the United States is not in an executive or managerial capacity.

On appeal, counsel submits a brief statement.

Section 203(b) of the Act, 8 U.S.C. § 1153(b), 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, 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. 8 C.F.R. § 204.5(j)(1). 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 an executive or managerial capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The petitioner avers that it: (1) is a subsidiary of Norwegian Marine Construction A.S. of Norway; (2) is a single-source supplier for rebuilding and renewing cruise ships; and (3) employs two persons, including the beneficiary who is currently occupying the proffered position as an intracompany transferee (L-1A). The petitioner is seeking to employ the beneficiary permanently at a salary of \$1,540 per week.

The issue to be discussed in this proceeding is whether the beneficiary's proposed employment with the U.S. entity is in a managerial or executive capacity.

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.

When filing the I-140 petition, the petitioner described the beneficiary's job as follows:

It is [the beneficiary's] responsibility to contact and liaise with different naval architects regarding new building and refurbishing projects. She is responsible for calculating jobs, estimating costs and preparing budgets and time schedules for bid purposes. Finally, [the

beneficiary] negotiates with U.S. customers and subcontractors and sell[s] the company's expertise to shipping owners.

...

[A]s President/Chief Executive Officer, [the beneficiary] has had independent discretion and authority to cultivate new clients, sources, and developing strong and mutually beneficial business. . . . Our organization has made [the beneficiary] responsible for the overall business success of [the petitioner]. [The beneficiary] has wide discretion to plan, develop and establish policies and objectives of our company in accordance with board directives. She is responsible for reviewing business plans and executing business contracts. [The beneficiary] will continue to plan business objectives and develop organizational policies as to coordinate administrative, financial, and marketing strategies. [The beneficiary] is responsible for setting goals and policies with respect to all business transactions to guarantee the success of our U.S. operations. She will continue to have the authority to hire and fire subcontractors and its employees.

The director was not satisfied with the initial evidence presented. Therefore, in a February 6, 2003 request for evidence (RFE), the director asked the petitioner to submit evidence relating to the beneficiary's proposed duties, including a description of her actual job responsibilities and information about the individuals she will supervise.

In response, the petitioner stated the following about the beneficiary's responsibilities:

As President of the U.S. branch, [the beneficiary] fills an executive role in our operations. This means that she has few direct supervisory duties of staff but is charged more with the overall broader future goals and strategic business development of the company. Her supervisory duties are limited, but she is ultimately responsible for all our activities and operations. We maintain only two full-time employees and rely on employees of our overseas parent company and independent contractors to conduct our operations.

...

[The beneficiary] is responsible for the supervision of the entire crew of each project. She must conduct an extensive pre-project planning process. This process includes budgeting; setting time parameters; reviewing blue-prints, plans, designs, and prices; and organizing personnel. She must review all daily activities and work progress during construction. As President, she alone is responsible for the final check-list before turning over the ship to the cruise line.

The petitioner also provided a breakdown of the beneficiary's activities:

- Review business plans and set the goals and policies for upcoming remodeling projects – 20%;

- Contact clients regarding new construction, remodeling and consultancy projects – 10%;
- Liaise with marine architects, interior designers, engineers, and other specialists to plan projects – 20%;
- Liaise with company professionals to set budgets and time-lines – 10%;
- Negotiate and execute corporate contracts – 10%;
- Review and make necessary changes to on-going operations – 20%; and
- Address all secondary company issues, such as personnel matters, reports to the home company, proper record keeping, permits and licenses, etc – 10%

The director denied the position because the proffered position is not in a managerial or executive capacity. Citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988), the director determined that the majority of the beneficiary's time would be spent performing the daily tasks of the company.

On appeal, counsel cites to the statutory definition of managerial capacity and states that the director failed to "provide any real analysis of the nature of [the beneficiary's] position." Counsel states that the director failed to consider the "substantial business undertaking involved in a cruise ship refurbishment," and that pursuant to an unpublished AAO decision, the beneficiary's supervision of outside contractors should qualify the position as managerial. Counsel also states that the management of a function would also qualify the position as managerial.

Counsel's statements on appeal are unpersuasive. As stated previously, the petitioner is required to furnish a job offer in the form of a statement that clearly describes the duties to be performed by the beneficiary. 8 C.F.R. § 204.5(j)(5). Although the petitioner indicates that the beneficiary will establish policies and objectives for its operations, the beneficiary's two job descriptions indicate that she will perform all of the tasks necessary for the petitioner to provide its services. For example, the beneficiary will work with architects and designers on projects, negotiate with clients, estimate costs, and prepare budgets. These tasks comprise the majority of the beneficiary's time in her position as president. She will not, therefore, primarily perform managerial functions. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International, id.*

Counsel refers to an unpublished decision involving an employee of the Irish Dairy Board, stating that the beneficiary's supervision of outside contractors is sufficient evidence that her employment would be in a managerial capacity. In the unpublished decision, the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity even though he was the sole employee of his company and managed only contract employees. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in that case; in fact, the beneficiary here is not the sole employee and she is not primarily engaged in the management of others. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

For the first time on appeal, counsel maintains that the beneficiary will manage an essential function. Counsel's assertion that the beneficiary is a manager because she will supervise outside contractors is

inconsistent with her claim that the beneficiary will be a functional manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. Again, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International, supra*. In this matter, counsel does not identify what particular function the beneficiary will manage and how it is essential to the petitioner's operations.

Based upon the evidence in the record, the AAO cannot conclude that the proffered position is in an executive or managerial capacity. The director's decision to deny the petition shall not be disturbed.

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 met that burden.

ORDER: The appeal is dismissed. The petition is denied.