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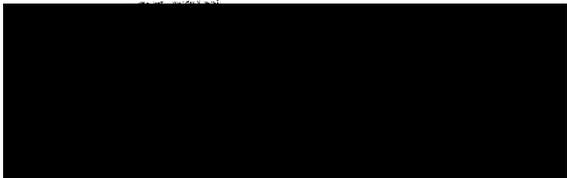
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FILE: WAC 03 247 54131 Office: CALIFORNIA SERVICE CENTER Date: JUL 11 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

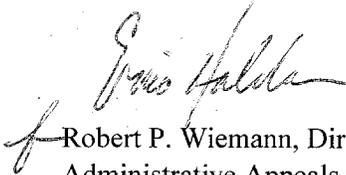
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



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

DISCUSSION: The Director, California Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of Nevada in January 1998. It promotes Japanese and U.S. business relationships. It seeks to employ the beneficiary as its president and chief executive officer. 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 would be employed in a primarily managerial or executive capacity for the United States entity.

On appeal, the petitioner contends that the beneficiary spends a majority of his time developing and sustaining client relationships and directing the company's business plan. The petitioner asserts that the beneficiary directs one professional level general manager, who in turn directs one administrative assistant. The petitioner also notes its plans to expand in the United States market and increase its number of employees.

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 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. *See* 8 C.F.R. § 204.5(j)(5).

The issue in this proceeding is whether the beneficiary will be employed in a 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.

In an August 25, 2003 letter appended to the petition, the petitioner indicated that the beneficiary's duties included the direction of the petitioner's business policy, development of the overall corporate plan, and interfacing with potential and current clients. The petitioner also noted that its general manager reported directly to the beneficiary and that the general manager's duties included the day-to-day operations of the petitioner. The petitioner stated that the general manager's duties also included contacting other professionals contracted to perform work for the petitioner, hosting trade lectures for local wholesalers and exporters, hosting investment lectures for Japanese investors, directing the petitioner's public relations, conducting entertainment market analysis, and evaluating international money markets. The petitioner also indicated that a secretary had been hired to perform office duties such as bookkeeping, answering telephones, and filing documents.

On August 12, 2004, the director requested: (1) a more detailed description of the beneficiary's duties in the United States; (2) a copy of the petitioner's organizational chart describing its managerial hierarchy and staffing levels, as of the date of filing the petition, which should include the names of all executives, managers, supervisors, and number of employees within each department or subdivision, and a brief description of job duties, educational levels, salaries/wages for all employees under the beneficiary's supervision; and, (3) the petitioner's state wage reports for the last four quarters.

In an October 22, 2004 response to the director's request for further evidence in support of the petition, the petitioner indicated that the beneficiary is responsible for: marketing, recommending and creating a new company logo, setting strategic margins on U.S. products, making corporate structure reforms including changing the company's reporting method and shifting the company's database and marketing methods, analyzing risk management, networking including appearances as a keynote speaker at conventions, tradeshow and conferences, meeting with public relations firms, collaborating with a consulting firm to extend the petitioner's consulting services, assisting U.S. businesses to enter the Japanese market, providing consulting services, hiring an accounting firm, managing cash flow, and writing business books.

The petitioner also noted that the beneficiary continued to make purchase order decisions for the parent company, directed the parent company's branch managers to develop niche products, employed a Japanese company to secure the parent corporation's database, formed a quality control task force for the parent company, and discontinued the parent company's telemarketing business.

The petitioner also provided an elaborate organizational chart showing the beneficiary as president, a general manager and an administrative assistant with numerous proposed positions that were currently unfilled. The petitioner's Nevada, NUCS-4072, Employer's Quarterly Contribution and Wage Report, for the third quarter of 2003 confirmed the beneficiary's employment, as well as that of the general manager, and the administrative assistant.

On December 13, 2004, the director determined that: (1) the description of the beneficiary's job duties was general and did not provide sufficient detail regarding the beneficiary's actual duties and the percentage of

time devoted to those duties; (2) some of the beneficiary's duties such as marketing and making purchase order decisions had not been shown to be managerial or executive responsibilities; (3) the petitioner did not possess the organizational complexity to warrant an executive position; and (4) the record indicated that a preponderance of the beneficiary's duties would be directly providing the services of the business. The director denied the petition concluding that the record did not establish that the beneficiary had been or would be employed in a qualifying managerial or executive capacity.

On appeal, the petitioner asserts that: the beneficiary supervises one professional, who in turn, supervises an administrative assistant; the beneficiary continues to supervise positions located in Japan which will be moved to the United States in the future; the beneficiary makes all management decisions and directs all employees; and, that denying the petition is premature.

The petitioner's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The petitioner provides a general description of the beneficiary's duties, indicating that the beneficiary's duties include the direction of the petitioner's business policy, development of the overall corporate plan, and interfacing with potential and current clients. These phrases do not sufficiently define the beneficiary's actual duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The petitioner indicates that the beneficiary, among other things, is responsible for marketing, recommending and creating a new company logo, setting strategic margins on U.S. products, networking, providing consulting services, assisting U.S. businesses to enter the Japanese market, and writing business books. These duties are more indicative of an individual performing promotional and consulting tasks for the company. As the director observed, 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*, 19 I&N Dec. 593, 604 (Comm. 1988). The petitioner does not explain or further clarify on appeal how performing the company's market research, developing new products, and hosting or attending meetings are primarily executive or managerial duties.

On appeal, the petitioner further confirms that the beneficiary is the individual responsible for developing and expanding the petitioner's operations and diversifying its services and product lines. The petitioner indicates that the beneficiary spends the majority of his time developing and sustaining client relationships and directing the petitioner's development and business plan. The petitioner in this matter described its purpose as promoting Japanese and U.S. business relationships. It is apparent that the beneficiary's primary responsibility is providing promotional services. Guiding a start up company in the early stages of its development and creating business opportunities do not constitute managing or directing the management of

the company in this instance. A petitioner must be sufficiently established to support a managerial or executive position when it filed the petition. The petitioner's intent to increase its number of employees is not relevant to establishing the beneficiary's current managerial or executive status. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In this matter, the petitioner has not demonstrated that the beneficiary manages or directs the enterprise or an essential function of the enterprise through the work of others. Although the petitioner has hired a general manager to assist the beneficiary in his endeavors to expand the petitioner's business, the addition of the "general manager" does not relieve the beneficiary from primarily providing the petitioner's everyday consulting and operational services. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Further, although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. In this matter, the petitioner has not established that either the "general manager" or the administrative assistant positions require the services of employees who possess or require a bachelor's degree, such that they could be classified as professionals. Nor has the petitioner shown that either of these employees primarily supervises subordinate staff members or manages a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Moreover, the petitioner has not adequately explained the necessity of the beneficiary's position in the United States to supervise employees located in Japan. The petitioner has not shown that the beneficiary's subordinate employees in the United States are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act; nor has the petitioner substantiated or adequately explained the beneficiary's supervision of employees located in Japan.

The AAO notes that the petitioner has submitted numerous untranslated documents on appeal. However, the petitioner's failure to submit certified translations of these documents precludes the AAO from determining whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

On review, the petitioner has not presented sufficient evidence to establish that the beneficiary's duties for the United States petitioner comprise primarily executive or managerial 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.