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

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FILE: WAC 03 195 53684 Office: CALIFORNIA SERVICE CENTER Date: JUN 02 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 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 on January 13, 2000 in the State of California and is engaged in the import and wholesale of appliances, restaurant equipment, rice cookers, vacuum bottles, air pots, and other general merchandise. It seeks to employ the beneficiary as its president/general manager. 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 managerial or executive capacity.

In his decision, the director made the following observations that lead to the denial:

The petitioning entity does not have a reasonable need for an executive because they are a four-employee company and this type of business does not require or have a reasonable need for an executive. It is contrary to common business practice and defies standard business logic for such a company to have an executive, as such a business does not possess the organizational complexity to warrant having such an employee.

* * *

Also, due to the type of business that the petitioner conducts, it is unreasonable to believe that the beneficiary as "President", [sic] with three subordinate employees, would not be assisting with the day[-]to[-]day non-supervisory duties. The performance of those menial tasks precludes the beneficiary from being considered an "executive."

These comments are inappropriate. The director should not hold a petitioner to an undefined and unsupported view of "common business practice" or "standard business logic." The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding. Although Citizenship and Immigration Services (CIS) must consider the reasonable needs of the petitioning business if staffing levels are considered as a factor, the director must articulate some legitimate basis for finding a petitioner's staff or structure to be unreasonable. *See* 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 cannot be deemed managers "because *they* are not managing professional employees." (Emphasis added in original). However, 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, managerial, or supervisory 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.

Second, section 101(a)(44)(A)(ii) of the Act indicates that, if the beneficiary supervises and controls the work of other supervisory or managerial employees and is thereby not a first-line supervisor, the sponsored position will meet the requirements for this second element of the definition of managerial capacity. In other words, it is not required that the beneficiary, or any of his subordinates for that matter, manage professional employees in order for the beneficiary to meet the requirements of managerial capacity under the Act. In those cases where the beneficiary is a first-line supervisor, however, he or she can still meet the requirements of the second element of managerial capacity provided that "the employees supervised are professional." Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). In the present matter, partly due to the director's failure to issue a request for evidence, it is unclear from the record whether the beneficiary's subordinates are supervisory, managerial, *or* professional employees. Nevertheless, the beneficiary may not be disqualified based on the conclusion that he does not manage professional employees, especially where the sole basis for such reasoning is that the second tier of managers supervises the petitioner's non-professional employees.

Furthermore, the director determined that "the beneficiary's subordinate employees cannot be deemed professionals because the position is not so complex as to require an individual with a college degree." 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. 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 failed to request additional information in order to determine the actual job duties and educational requirements of the beneficiary's subordinates or the beneficiary's own specific job duties.

After a thorough review of the record, it is concluded that the denial is deficient as it is based on the director's vague and unsupported definitions of the law and regulations. As the decision is void of a factual analysis of the evidence of record, there is no indication that the director actually considered any of the relevant documentation submitted in support of the initial petition. Nor did the director make an effort to obtain additional evidence or information upon which to draw a proper conclusion. Accordingly, the case will be remanded for a new decision, which shall take proper notice of the beneficiary's duties and the duties of his subordinates. The director may issue a notice requesting any additional evidence he deems necessary in order to determine the petitioner's eligibility for the benefit sought.

ORDER: The decision of the director dated July 17, 2004 is hereby withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse, shall be certified to the AAO for review.