

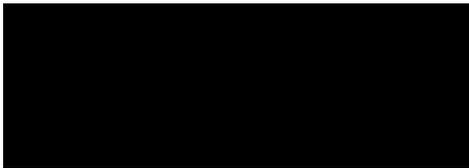


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FILE: WAC 03 136 53543 Office: CALIFORNIA SERVICE CENTER Date: JUN 13 2005

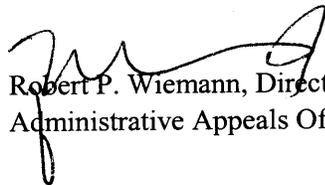
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[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

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 appeal will be sustained.

The petitioner is a California corporation engaged in the import and distribution of automobile replacement and performance light accessories. It seeks to employ the beneficiary as its president. 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.

On August 27, 2004, the director denied the petition based on the determination that the petitioner failed to establish that the beneficiary would be employed in the United States in a managerial or executive capacity. Specifically, the director acknowledged all of the employees named in the petitioner's organizational chart and noted that "[t]he petitioner has not established that the nature of the petitioner's business would require as many managers or executives to run this business." However, the director's comment was inappropriate and failed to articulate a rational basis for finding the petitioner's staffing structure to be unreasonable. See section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). The director went beyond the regulatory criteria in requiring the petitioner to justify the number of managers it has in light of the nature of its business.

Furthermore, while the director listed all of the employees named in the petitioner's organizational chart, he erroneously indicated that many of the named employees were not on the petitioner's payroll. This determination is apparently based on the director's oversight of one of two pages of the 2003 first quarter Form DE-6, which was submitted in response to the director's request for additional evidence (RFE). Contrary to the director's finding, all but one of the employees listed in the petitioner's organizational chart can be found in the relevant quarterly wage statement. In regard to the one remaining employee not listed in the quarterly wage report, the petitioner readily admitted in the employee list submitted on appeal that this individual was not compensated in a manner similar to the remaining employees.

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)). In the instant matter, the beneficiary's job description is corroborated by the petitioner's hierarchical structure, which includes several management tiers and is sufficient to relieve the beneficiary from having to perform non-qualifying duties as claimed. The evidence furnished by the petitioner adequately demonstrates that the petitioner has successfully overcome the director's sole ground for denying the petition and is otherwise eligible to classify the beneficiary as a multinational manager or executive.

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 sustained that burden.

ORDER: The appeal is sustained.