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

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JUN 20 2005

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date:
SRC 03 141 51401

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, Texas 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 July 17, 2001 in the State of Georgia and is engaged in the business of providing venture capital and management services to life science companies. It seeks to hire 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. The director determined that the petitioner failed to establish its ability to pay the proffered wage and denied the petition.

On appeal, counsel disputes the director's findings and submits sufficient documentation to overcome the single ground for the denial. Mainly, the petitioner submitted the beneficiary's 2003 W-2 wage and tax statement, the beneficiary's cashed pay checks for 2003, and the petitioner's own quarterly wage reports for 2003, all showing that the beneficiary had been paid his proffered wage of \$108,000 in the year 2003, the year in which the petition was filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

However, the beneficiary may nevertheless be ineligible for classification as a multinational manager or executive based on a number of issues that were not addressed by the director.

First, the record, as presently constituted, does not establish that the beneficiary would be employed in a managerial or executive capacity as defined in section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A) and section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), respectively.

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). In the instant matter, the petitioner has provided Citizenship and Immigration Services (CIS) with a cursory review of the beneficiary's responsibilities, which suggests that the beneficiary be engaged in customer service, advertising, promotion, and sales, none of which can be deemed qualifying. It is noted that 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). Furthermore, while the petitioner generally indicates that the beneficiary's discretionary authority fits the definition of managerial or executive capacity, these definitions are meant to serve only as guidelines to be applied to a specific list of duties. Where, as in the instant case, the petitioner fails to provide CIS with a specific list of duties, a determination cannot be affirmatively made that the beneficiary primarily performs qualifying tasks. 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).

Second, the record has no information at all regarding the beneficiary's overseas employment. As such, CIS cannot conclude that the beneficiary was employed overseas in a qualifying capacity for one out of three years prior to his entry to the United States as a nonimmigrant. *See* 8 C.F.R. § 204.5(j)(3)(B).

Third, the record lacks sufficient evidence to suggest that the petitioner had been doing business for at least one year prior to filing the instant petition. *See* 8 C.F.R. § 204.5(j)(3)(D). Pursuant to the regulations at 8

C.F.R. § 204.5(j)(2), *doing business* means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation or other entity and does not include the mere presence of an agent or office. In the instant matter, the petitioner indicates that aside from investing as a venture capitalist, it also offers management and consulting services. Although the record contains copies of agreements in which the petitioner is the party that has been contracted to provide these services, there is no evidence in the record that the petitioner has been and continues to do so on a regular, systematic, and continuous basis.

Therefore, while the AAO will withdraw the director's decision, the record as presently constituted does not warrant an approval of the petition. Accordingly, the case will be remanded for a new decision, which shall take proper notice of the issues discussed above. The director is instructed to issue a request for additional evidence in order to allow the petitioner to address the relevant factors that pertain to its eligibility for the immigration benefit sought. The director may also request any additional evidence he deems necessary in order to determine the petitioner's eligibility.

ORDER: The decision of the director dated September 13, 2004 is 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.