

Identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B4



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 01 2008
WAC 04 174 51678

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 appeal will be dismissed.

The petitioner is a California corporation engaged in the business of providing specialized international packaging and printing services to U.S. publishers and printing professionals. The petitioner is also engaged in disseminating U.S. technologies, equipment, and materials in China's printing industry. 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. The director determined that the petitioner failed to submit sufficient evidence to establish that the beneficiary would be employed in the United States in a managerial or executive capacity and denied the petition.

On appeal, the petitioner disputes the director's conclusion, providing a brief statement and additional documentation in support of its arguments.

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 a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who 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 which 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.

The issue in this proceeding is whether the beneficiary will be employed in a capacity that is managerial or executive.

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 support of the petition, the petitioner submitted a letter dated May 18, 2004, which provided the following description of the duties to be performed by the beneficiary under an approved petition:

As president of the U[.]S[.] company, [the beneficiary] has been responsible for the overall financial, administrative and business projects of the company. She has been formulating company business policies and directives for the implementation by the department managers. She is directing the coordination among the company departments and the Chinese parent company. She has directed the lower managers in the establishment and improvement of systematized marketing transactions with the pertinent U.S. companies.

She also manages company officers in planning business objectives to increase sales volume and products [sic] quality. In the process, [the beneficiary] also allocates responsibilities [sic] for the different company departments according to the company general business plan and parent company's directives. She supervises and evaluates performance of lower managers in compliance with company business policies and objectives. She reviews activity reports and business documents. Finally, she interviews and recruits corporate employees in accordance with the subsidiary's corporate needs.

The petitioner also stated that it has six positions filled within its hierarchy and indicates that all six employees are professional.

On January 28, 2005, the director issued a request for additional evidence (RFE) instructing the petitioner to submit its organizational chart describing the company's managerial hierarchy and staffing levels as of the date the petition was filed in April 2004. The petitioner was asked to clearly identify the beneficiary's position in the chart, her subordinates' names and job titles as well as their job duties and educational levels. The beneficiary was also instructed to submit a more detailed description of the beneficiary's job duties to include a breakdown of the duties that comprise the beneficiary's typical day of work. Additional documentation was also requested in the form of the petitioner's wage report for the second quarter of 2004.

In response, the petitioner provided a letter dated March 31, 2005, which refers to the description of the beneficiary's duties included in exhibit three of the petitioner's submissions. As the duties listed in the petitioner's description have been incorporated into the director's decision, the AAO will not repeat that list in the instant decision. It is noted that the description does not address the director's specific request for a detailed account of the beneficiary's typical day of work. The petitioner did, however, provide the requested organizational chart, descriptions of duties for the petitioner's employees, and the petitioner's quarterly wage report for the quarter during which the petition was filed identifying the individuals listed in the organizational chart.

On May 17, 2005, the director denied the petition concluding that the petitioner failed to submit sufficient evidence to warrant a finding that the beneficiary would primarily perform managerial or executive duties. While the record supports the director's overall conclusion, the AAO notes that the decision contains various erroneous comments, which will be discussed below and subsequently withdrawn.

First, the director recited the petitioner's organizational structure and deemed it unreasonable that a primarily managerial employee could be adequately relieved of having to perform nonqualifying duties with the existing organizational structure. The director did not explain how the structure was deficient and instead noted that the beneficiary's "performance of those menial tasks" would preclude her from primarily performing tasks of a qualifying nature. The director did not, however, provide an analysis of the specific duties he perceived to be nonqualifying and gave little indication that the descriptions of duties of the beneficiary's subordinate staff, as provided in response to the Request for Evidence, were considered. As there is no basis for the director's specific finding discussed herein, the comment with regard to the beneficiary's performance of "menial tasks" is hereby withdrawn.

Second, the director noted that the beneficiary's subordinates cannot be deemed professionals and that the beneficiary can therefore only be deemed a first-line supervisor who supervises nonprofessional employees. However, section 101(a)(44)(A)(ii) of the Act allows for a beneficiary who supervises and controls the work

of other supervisory or managerial employees, not just subordinates that are deemed professional. There is no indication this provision has been considered in its entirety. Therefore, the director's finding with regard to the employment capacity of the beneficiary's subordinates is also hereby withdrawn.

Notwithstanding the director's inaccurate comments, the director properly concluded that the record lacks sufficient evidence to conclude that the beneficiary would primarily perform duties of a qualifying nature.

On appeal, the beneficiary provides a written statement on behalf of the petitioner discussing the progress in the petitioner's development since June of 2001 when the beneficiary assumed her current position as president of the petitioning entity. The beneficiary also claims that some of her employees are professional and refers the AAO to the attached documentation that reveals the educational credentials of the beneficiary's subordinates. Although the beneficiary emphasizes the large contributions she has made to the overall success of the petitioning entity, she does not provide any additional information regarding her specific duties.

In examining the executive or managerial capacity of the beneficiary, CIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). As precedent case law has established, the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). In the instant matter, the petitioner has been consistent in providing a broad range of the beneficiary's responsibilities, clearly indicating that the beneficiary has been and would continue to exercise a high degree of discretionary authority over the individual aspects of the business as well as the petitioner's future business projects. The descriptions also suggest that the beneficiary's direct subordinates occupy managerial or supervisory positions. However, the petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The director stressed the importance of this information when he issued the RFE, which specifically instructed the petitioner to provide a detailed account of the beneficiary's daily 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. *Id.*

Although the petitioner has provided a sufficient illustration of its organizational hierarchy and has provided sufficient information as to the duties of the beneficiary's direct and indirect subordinates, the record lacks a detailed description discussing the duties the beneficiary herself would perform on a day-to-day basis. The AAO cannot conclude that the beneficiary would primarily perform managerial or executive duties based on information about the petitioner's personnel and the beneficiary's dominant role within the petitioner's organizational hierarchy. The regulations require a detailed description of the beneficiary's daily job duties. *See* 8 C.F.R. § 204.5(j)(5). As the record lacks sufficient information to indicate what specific duties the beneficiary would perform on a daily basis, the AAO cannot affirmatively conclude that the beneficiary would primarily perform managerial or executive duties.

Additionally, though not discussed in the director's decision, the regulation at 8 C.F.R. § 204.5(j)(3)(i)(C) states that the petitioner is required to submit evidence that the prospective United States employer and the beneficiary's foreign employer have a qualifying relationship as defined in 8 C.F.R. § 204.5(j)(2).

In the instant matter, the petitioner claims to be a wholly owned subsidiary [REDACTED] Ltd., located in China. In support of this claim, the petitioner has provided a number of documents including stock certificates, a stock transfer ledger, a California Notice of Transactions, and evidence of a wire transfer in the amount of the

purchased stock. However, the documentation of the wire transfer indicates that [REDACTED] Foreign [REDACTED] Co., Ltd. was the originator of the funds used to purchase the petitioner's stock. The petitioner has explained that the foreign parent entity entrusted the actual fund transfer to a third party company, which the petitioner claims was legally authorized by the Chinese government to handle foreign exchange matters. However, the petitioner has not provided any documentation to support its claims regarding the [REDACTED] authority to engage in foreign exchange matters; nor has the petitioner provided any documentation establishing what China's foreign monetary exchange policies were at the time the fund transfer took place. 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)).

Furthermore, in the response to the Request for Evidence, the petitioner provided a translated explanation from the foreign entity reiterating [REDACTED] role in the transfer of funds used to purchase the petitioner's stock. The explanation indicated that a copy of the original Authorization Agreement regarding the details of the fund transfer was submitted to Citizenship and Immigration Services (CIS) in 2001. However, the Form I-140, which is at issue in the instant matter, was not filed until 2004. Thus, even if the claimed copy of the Authorization Agreement was submitted to CIS, it was submitted in a separate proceeding and is not part of the instant record of proceeding. As such, the record, as presently constituted, does not establish that the beneficiary's foreign employer actually purchased the petitioner's stock as claimed.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. In the instant matter, the record does not clearly establish that the claimed foreign entity actually paid for its ownership of the U.S. petitioner's stock. Therefore, the AAO cannot conclude that the beneficiary's foreign employer and the U.S. petitioner have a qualifying relationship as claimed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). Accordingly, the petition cannot be approved pursuant to the additional ground of ineligibility discussed above.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 sustained that burden.



ORDER: The appeal is dismissed.