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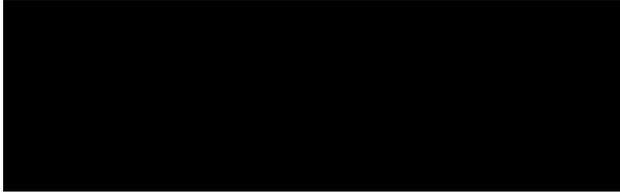
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
SRC 04 109 50648

Office: TEXAS SERVICE CENTER Date:

FEB 01 2006

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, 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 is a Texas corporation engaged in the acquisition and wholesale distribution of liquefied petroleum gas. It seeks to employ the beneficiary as its accounts 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.

On February 8, 2005, the director denied the petition on the following independent grounds of ineligibility: 1) the petitioner failed to submit evidence showing the beneficiary performing "exclusive" managerial or executive duties; 2) the petitioner failed to establish that it has a qualifying relationship with a foreign entity; 3) the petitioner failed to establish its ability to pay the beneficiary's proffered wage; and 4) the petitioner failed to establish that it had been doing business for one year prior to filing the petition.

Although a request for additional evidence (RFE) was issued on November 10, 2004, counsel properly points out on appeal that the director failed to instruct the petitioner to submit evidence addressing the issues cited in grounds 2, 3, and 4 of the denial. Nevertheless, the petitioner submitted sufficient evidence on appeal to overcome grounds 3 and 4 of the denial.

The petitioner also submitted additional evidence in the form of audited financial statements for itself and the U.S. holding company that directly owns a majority of the petitioner's outstanding shares. While this evidence adequately establishes the U.S. petitioner's ownership, the record lacks sufficient evidence to establish the ownership and control of the beneficiary's foreign employer. More specifically, the documents provided to establish the ownership of the foreign entity are not translated into English. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the director shall instruct the petitioner to submit certified translations of any and all documents submitted in support of its claim. Any foreign document not accompanied by a certified translation is not probative and will not be accorded any weight in this proceeding.

Finally, with regard to the issue of the beneficiary's duties, sections 101(a)(44)(A) and (B) of the Act require that the beneficiary's proposed duties be primarily within a qualifying managerial or executive capacity. Contrary to the director's conclusion, there is no statute or regulation that requires the petitioner to establish that the beneficiary would perform managerial or executive tasks to the exclusion of all other tasks; nor is there a statute or regulation that requires the petitioner to establish that the beneficiary, even if employed by the petitioning entity at the time the petition is filed, is performing within the proposed qualifying capacity at such time. The beneficiary does not have to assume the qualifying position unless and until Citizenship and Immigration Services (CIS) approves the Form I-140 and grants the beneficiary Lawful Permanent Residence. That being said, in 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). 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 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). Thus, the petitioner must submit a detailed description of the beneficiary's proposed day-to-day duties under an approved petition.

It is noted that the petitioner has indicated that the beneficiary's duties in the United States would be similar to those previously performed during his employment abroad. However, while the foreign organizational chart shows that the beneficiary had several supervisory subordinate employees, each with their own subordinates, the U.S. petitioner's organizational chart does not indicate that the beneficiary manages any subordinates. The petitioner shall be instructed to explain the beneficiary's position within the organizational hierarchy and fully discuss the scope of the beneficiary's duties.

ORDER: The decision of the director dated February 8, 2005 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.