U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 1 9 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The director denied the employment-based preference visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a Florida corporation that seeks to employ the beneficiary as its president. The petitioner, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition because the beneficiary was not employed in a managerial or executive capacity for at least one year in the three years immediately preceding his entry into the United States in a nonimmigrant status.

On appeal, counsel submits a brief. The petitioner submits a letter from the foreign entity and a copy of an organizational chart that is already included in the record.

Section 203(b) of the Act, 8 U.S.C. § 1153(b), 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.

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, 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. 8 C.F.R. § 204.5(j)(1). 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 that indicates that the alien is to be employed in the United States in an executive or managerial capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The petitioner avers that it is a subsidiary o[redacted] of Turkey. The petitioner claimed on the I-140 petition that it was in the auto finance business; in subsequent correspondence, the petitioner claimed that it owns and operates five car dealerships. The petitioner states that it employs 10 persons, including the beneficiary who is occupying the proffered position as an intracompany transferee (L-1A). The petitioner is offering to employ the beneficiary permanently at an annual salary of $35,000.

The issue to be discussed in this proceeding is whether the beneficiary's job with the foreign entity was in a managerial or executive capacity. Pursuant to 8 C.F.R § 204.5(j)(3)(i)(B), the beneficiary must have been employed by a qualifying foreign entity in a managerial or executive capacity for at least one year in the three years immediately preceding his entry into the United States as a nonimmigrant.

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;
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> (ii) establishes the goals and policies of the organization, component, or function;
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> (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.

When filing the petition, the petitioner described the beneficiary's foreign employment as follows:

> [A]s Director, the Beneficiary was charged with the overall responsibility for the entire operations of [the foreign entity]. Those duties included establishing and maintaining business contacts, negotiation and administration of contracts, development and implementation of company operational and fiscal policies and procedures, sales, development and supervision of sales staff, promoting and maintaining a fiscally efficient and profitable operation, and preparation of reports.

In a June 20, 2002 request for evidence (RFE), the director asked the petitioner to provide an organizational chart for the foreign entity to include the job titles and job duties of each employee. The director also asked the petitioner to list the beneficiary's daily duties and describe his foreign employment in more detail.

In response, the petitioner submitted the requested organizational chart along with the job titles and job descriptions of the employees. The petitioner stated that the foreign entity operated a retail store, of which the beneficiary was the general manager. The chart indicated that the beneficiary supervised an account manager and a sales manager; the account manager supervised three positions, and the sales manager supervised three sales agents. Regarding the beneficiary's daily duties, the petitioner stated the following:

> Open facility; disburse operating case; assure all positions are staffed, and that the facility is ready for business;
>
> Hire, fire, train, discipline and supervise employees; address personnel issues and problems; establish job responsibilities and procedures; and ensure operation within established procedures and guidelines;
>
> Negotiate contracts with suppliers and vendors; site visits to suppliers; maintain records on inventory and sales; assure availability of inventory; develop additional business opportunities; meet with potential business associates; [and]
>
> Approve Payroll; review daily activity and cash-in expense reports to reconcile with deposits; secure cash; close facility.

The director denied the petition because the beneficiary's foreign employment was not managerial or executive. The director concluded, "that a large portion of [the beneficiary's] day was spent performing the necessary tasks for a retail operation to operate."

On appeal, counsel states that the director misconstrued the evidence. According to counsel, the foreign entity was divided into two divisions, each of which had a head that reported directly to the beneficiary, who was the head of the entire operation. Counsel states that the foreign entity employed six lower level employees who actually engaged in the day-to-day operations of the business. Counsel maintains that the beneficiary primarily executed all of the responsibilities listed under the definition of managerial capacity, and that evidence of this is the director's prior approvals of L-1A petitions on the beneficiary's behalf. In addition to the previously-submitted organizational chart, the petitioner submits a letter from the foreign

entity. According to the letter, the beneficiary spent: five percent of his time opening the facility and performing other similar duties; 45 percent of his time hiring, firing, and training employees along with other personnel issues; 30 percent of his time negotiating contracts; 15 percent of his time approving payroll and other activities; and five percent of his time securing cash and closing the store.

The evidence in the record fails to establish that the beneficiary's foreign employment was in a managerial or executive capacity. The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in one of the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time performing day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The beneficiary's duties as described by the foreign entity are not distinguishable from the duties of the other employees. For example, the inventory manager's job description indicates that he or she tracks inventory and generates reports. However, the beneficiary's job description also indicates that he "maintain[s] records on inventory" and "assures availability of inventory." In addition, according to the foreign entity, the account manager oversees accounting and billing as well as other financial matters; yet, part of the beneficiary's job responsibility was to "review daily activity and cash-in expense reports to reconcile with deposits." The duplication of duties among the foreign entity's employees does not enable Citizenship and Immigration Services (CIS) to conclude that the beneficiary primarily managed the organization. Although the organizational chart indicates that the beneficiary was at the top of the organizational hierarchy, the petitioner fails to establish that the beneficiary actually functioned in a qualifying managerial or executive capacity. Based upon the evidence before the AAO, it would appear that the beneficiary was a first-line supervisor to nonprofessional employees. Although three of the employees held managerial titles, their job descriptions, which provided only skeletal information about their daily activities, failed to establish that they actually functioned as managers.

A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

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 met that burden.

ORDER: The appeal is dismissed. The petition is denied.