



U.S. Department of Justice

Immigration and Naturalization Service

B4

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[Redacted]

File [Redacted] Office: Texas Service Center Date:

AUG 30 2000

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)

IN BEHALF OF PETITIONER:

[Redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a Florida corporation that claims to be engaged in the management, marketing, and sales of custom jewelry and clothes. The petitioner further claims to be a [REDACTED]

[REDACTED] The petitioner seeks 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), to serve as an executive managing director. The director determined that the petitioner had not established that: a qualifying relationship exists between it and the claimed parent company; it has the ability to pay the proffered wage; or, the beneficiary had been employed in a managerial or executive capacity.

On appeal, counsel submits a statement and additional documents.

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 first issue in this proceeding is whether a qualifying relationship exists between the petitioner and the claimed parent company.

8 C.F.R. 204.5(j)(2) states in pertinent part:

*Affiliate* means:

(A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

(B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The visa classification that the petitioner seeks is intended for multinational executives and managers. The language of the statute specifically limits this visa classification to those executives and managers who have previously worked abroad for at least one year in the preceding three for the overseas entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary. In order to qualify for this visa classification, the petitioner must establish that there is a qualifying relationship between the United States and foreign entities, in that the petitioning company is the same employer or an affiliate or subsidiary of the overseas company.

In its letter dated September 2, 1997, the petitioner stated that it "is a wholly owned subsidiary of [REDACTED] In support of this claim the petitioner provided a photocopy of a stock certificate representing 500 shares of the capital stock of [REDACTED] The petitioner also submitted photocopies of its 1992, 1993, 1994, 1995, and 1996 IRS Forms 1120A, U.S. Corporation Short Form Income Tax Return. The 1992, 1993, and 1994 returns indicate at part II, number 2, that [REDACTED] the president, not the claimed parent company, owns 100 percent of the issued stock in the corporation. This section is not completed on the 1995 or 1996 returns; however, the Schedule K attachments with each of these returns indicated that [REDACTED] owned 100% of the petitioning organization's stock. These tax returns also indicate that the petitioning organization is involved in the sale of apparel. A letter from the accounting firm for [REDACTED] indicated that organization "deals in import, export and marketing of technical equipment for manufacturing." The petitioner did not submit any additional evidence to establish the ownership of the petitioning enterprise.

In his decision, the director noted that there was no evidence that [REDACTED] On appeal, counsel states that he is submitting the petitioner's 1997 IRS Form 1120A "affirming that the [REDACTED]

[REDACTED] Counsel

submitted the 1997 return which indicated in the Schedule K attachment that [REDACTED] owned 100% of the petitioner's stock.

The evidence submitted does not establish that a qualifying relationship exists between [REDACTED] and [REDACTED]. Evidence submitted prior to submission of the appeal indicated that [REDACTED] owned 100% of [REDACTED]. The 1997 tax return submitted on appeal now indicates that [REDACTED] owns 100% of [REDACTED]. There is no documentary evidence of the purported sale of this stock to [REDACTED]. Accordingly, the petition may not be approved.

The next issue to be examined is whether the petitioner has the ability to pay the proffered wage. It is noted that the director questioned the foreign company's ability to pay the wage; however, there is no evidence that the petitioning organization has a qualifying relationship with a foreign entity. As such, we will examine the United States company's ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that the beneficiary will receive an annual salary of \$31,200.00. The petitioner submitted photocopies of its 1992, 1993, 1994, 1995, and 1996 tax returns. According to the 1996 tax return, the petitioner had a taxable income of (\$789.00); the Schedule L attachment of the 1996 tax return indicated that the petitioner had \$1,408.00 in liabilities and (\$773.00) in cash. On appeal, the petitioner submits a photocopy of its 1997 tax return. According to this return, the petitioner had a taxable income of \$7,796.00; the Schedule L attachment indicated that the petitioner had \$3,453.00 in liabilities and \$5,520.00 in cash. The evidence submitted in support of this petition does not establish the petitioner's ability to pay the beneficiary an annual salary of \$31,200.00. The tax returns do not document a sufficient cash basis to support the beneficiary's salary. The petitioner also submitted financial statements; however, none of these financial statements was audited. Accordingly, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

The next issue in this proceeding is whether the beneficiary has been and will be performing managerial or executive duties.

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.

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.

In its letter dated September 2, 1997, the petitioner stated that the beneficiary:

directs the management of the organization along with the financial and marketing aspects of the corporation. She plans, develops and establishes policies and objectives for business organization. Also, [she] reviews the financial statements to determine progress and status for the company. [The beneficiary] directs and coordinates the formulation of financial programs to provide funding for new or continuing operations to maximize returns on investments and to increase productivity. She plans and develops industrial, labor, and public relations policies designed to improve the company's image and the relations with customers, employees, stockholders, and the public. [She] evaluates the performance of executives for compliance with establish policies, and she has the authority to hire and fire employees, sign contracts and leases and to exercise authority over those who are handling the day to day operation of the company.

On October 17, 1997, the director requested that the petitioner submit additional information. In response, counsel stated that "the company has one employee in the U.S., [redacted] Counsel continued by describing [redacted] duties at the company. It must be noted that [redacted] job description is almost identical to the beneficiary's prospective job description cited above.

On appeal, counsel submits photocopies of previously-submitted documents. The record is not convincing in demonstrating that the beneficiary's duties in the proposed position will be primarily managerial or executive in nature. The description of the duties to be performed by the beneficiary in the proposed position does not demonstrate that the beneficiary will have managerial control and authority over a function, department, subdivision or component of the company. Further, the record does not sufficiently demonstrate that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve her from performing nonqualifying duties. The Service is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title. The petitioner has not established that the beneficiary has

been or will be employed in a primarily managerial or executive capacity.

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.