



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: Vermont Service Center Date: **AUG 31 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrence M. O'Reilly, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The preference visa petition was approved by the Director, Vermont Service Center. Upon subsequent review, the director revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a New York corporation that claims to be engaged in the wholesale of gems and jewels. The petitioner further claims to be a [REDACTED]

The petitioner 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), to serve as a manager. The director determined that the petitioner had not established that the beneficiary had been employed in a managerial or executive capacity or that the beneficiary would be employed in a managerial or executive capacity.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

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.

At 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 July 15, 1998, the petitioner stated that the beneficiary:

assumed responsibility for the management, supervision, and direction of all o[f] our overseas negotiations and contracts. In this executive capacity, [the beneficiary] oversaw the activity of 20 employees including Executive Sales and Service Managers . . . As [redacted] oversees the functioning of our New York operations . . . he oversees the sales and marketing activities of both offices, as well as providing comprehensive managerial guidance for our business and sales staff. More specifically, [the beneficiary] will be directly responsible for the supervision, management and coordination of all sales and business negotiations and contracts, promotional efforts, and financial status of the company.

The petitioner submitted an "organizational chart" which indicated that the beneficiary was above the sales manager and the business manager. There were additional positions listed under the beneficiary's; however, these were positions that would "be implemented in the Near Future."

On August 10, 1999, the director issued a notice of intent to revoke and requested that the petitioner submit evidence that the beneficiary's position is executive or managerial in nature other than in position title. In response, counsel argued that "a review of the record against the regulations clearly indicates that [the beneficiary] is performing duties that are primarily executive or managerial in nature." The director [redacted] stated that the beneficiary:

has been and continues to be responsible for overseeing the sales and marketing functions of the U.S. office. He is further responsible for directing the finance and accounting functions of the U.S. company . . . [He] is responsible for the direction, control and supervision of [other personnel].

In a statement dated September 8, 1999, the beneficiary stated that:

As Manager, I oversee the sales, marketing, accounting and finance functions of [redacted] and I am completely responsible for the development and implementation of strategic plans that will enable [redacted] to grow and prosper. I report to the Director of [redacted] who provides general advise and guidance and I supervise, direct and control the activities of the Sales Manager and Business Manager. I have wide latitude in decision making including the strategic direction of the company, budgeting and staffing.

The petitioner submitted photocopies of "Form W-2 for all employees of [redacted] There were four Forms W-2 submitted, including one issued to the beneficiary.

On appeal, counsel argues that "the evidence submitted in support of the petitioner clearly demonstrated that the position to be occupied by the beneficiary is in fact executive in nature and that the beneficiary . . . is a qualified executive." Counsel submits letters from several individuals attesting to the beneficiary's knowledge of the industry with which he is associated.

Upon review, counsel's assertions are not persuasive. The record contains insufficient evidence to demonstrate that the beneficiary has been employed in a primarily managerial or executive capacity. Further, 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 beneficiary's job duties provided by the petitioner, and reiterated by the beneficiary himself, serve to merely paraphrase the statutory definition of managerial or executive capacity. 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. Rather, it appears that the beneficiary has worked, and will work, as a salesman in the United States. Further, the record does not sufficiently demonstrate that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing nonqualifying duties. The evidence submitted suggests that the beneficiary is one of a limited number of United States-based employees. 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.

Counsel also states that the Service has already approved an L-1A petition, an request for an extension of stay as an L-1A, and initially approved this petition. Counsel argues that the facts of the case remain the same, and it is unclear why the Service is now revoking the approval of the petition. The Service is under no obligation to approve a petition when the evidence submitted in support of such petition is not sufficient. This does not change simply because the Service may have approved previous petitions in error.

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In Matter of Estime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the

petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 595 (BIA 1988) (citing Matter of Estime, 19 I&N 450 (BIA 1987)). In the present case, the decision to revoke will be affirmed.

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.