



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



File: [Redacted] Office: Texas Service Center Date: SEP 12 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:



Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

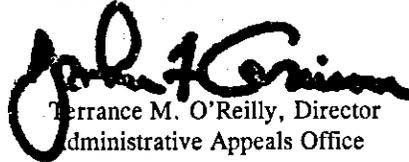
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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

  
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 [REDACTED] corporation that claims to be engaged in electrical and electronic contracting, installation and maintenance. The petitioner further claims that [REDACTED] located in [REDACTED] is its subsidiary. 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 the executive director. The director determined that the petitioner had not established that the beneficiary had been employed in a managerial or executive capacity. The director also found that the petitioner had failed to establish that it had been doing business throughout the one-year period prior to filing.

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.

The first issue to be examined 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.

Section 101(a)(44)(C) of the Act, 8 U.S.C. 1101(a)(44)(C), provides:

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the

number of employees that the individual supervises or has supervised or directs or has directed.

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 August 29, 1997, the petitioner stated that the beneficiary's duties:

will comprise of managerial responsibility for directing, coordinating, controlling, and overseeing technical operations of the company; operating at a senior level and exercising discretion over day to day operations involving hiring necessary personnel, sub-contractors and personal consultants; negotiating and supervising technical design and bidding of contracts valued in excess of \$750,000; managing financial budgets in excess of \$250,000; analyzing, evaluating, and researching the market; identifying business opportunities and formulating and implementing business strategies to enable [REDACTED] to become a dominant force in the high-tech corridor of [REDACTED]

On March 17, 1998, the director requested that the petitioner submit additional information. In response, the petitioner submitted photocopies of six of its Internal Revenue Service ("IRS") Forms 941, Employer's Quarterly Federal Tax Return. According to these returns, the beneficiary was the petitioner's only employee for four of these quarters. These returns further indicate that the petitioner never employed more than three individuals.

On appeal, counsel argues that the beneficiary:

performs an essential function relating to the directing, coordinating, controlling and overseeing management of numerous investment properties that includes making critical and time sensitive decisions to resolve management, financial and man power issues.

Contrary to counsel's assertion, 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 him 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.

Counsel refers to several unpublished administrative decisions of this Service to support her argument. While it has not been shown that the facts of the cases are similar, it must be noted that the unpublished administrative decisions relied on by counsel do not have binding precedential value. See 8 C.F.R. 103.3(c).

The next issue to be examined is whether the petitioner has established that it was doing business for at least one year. The petition was filed on December 2, 1997.

The phrase "doing business" is defined at 8 C.F.R. 204.5(j)(2) as follows: "*Doing business* means the regular, systematic and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office."

The petitioner submitted photocopies of its 1995 and 1996 federal income tax returns. The 1995 return indicated that the petitioner made \$127,949.00 in gross receipts, the 1996 return indicated \$119,100.00 in gross receipts. On March 17, 1998, the director requested that the petitioner submit evidence that it had been doing business. In response, the petitioner submitted a photocopy of its 1997 federal income tax return. This return indicated that the petitioner made \$333,164.00 in gross receipts. None of the returns submitted by the petitioner was supported by any documentary evidence (such as sales receipts or other independent evidence of payment for services rendered). Also, there is no evidence that these returns were actually filed with the IRS.

On appeal, the petitioner submits a photocopy of its 1998 income tax return which indicates the petitioner made \$319,730.00 in gross receipts. Again, the tax return was not supported by any documentary evidence. The petitioner also submits self-prepared financial statements. Counsel argues that the petitioner has submitted sufficient evidence to establish that it was doing business. Contrary to counsel's contention, the petitioner has not submitted sufficient evidence to establish that it is doing business as defined in the regulations. In the instant case, the petitioner has not submitted any independent, documentary evidence to support the information contained in its income tax returns or its self-prepared financial statements. Simply going on record

without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Accordingly, the petitioner has not established that it is conducting business in a regular, systematic, and continuous manner. For this additional reason, the petition may not be approved.

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.