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U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

File: EAC 00 022 52415 Office: VERMONT SERVICE CENTER

Date: 01 OCT 2001

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:



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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center denied the immigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an interior remodeling contractor that seeks to employ the beneficiary as its president and, therefore, endeavors to classify the beneficiary as a multinational manager or executive 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 evidence in the record did not support a finding that the petitioner currently employs and would continue to employ the beneficiary in a primarily managerial or executive capacity.

On appeal, counsel submits a brief.

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 director denied the petition because the petitioner employed only the beneficiary, an assistant manager and one other employee. The director found that this organizational structure led to the conclusion that the beneficiary was primarily "engaged in providing sales and services to your organization's clients, not directing the organization as asserted by you."

On appeal, counsel states that the petitioner previously submitted a description of the beneficiary's position, which indicates that he plans and develops both short-term and long-term business policies, manages the operations, and makes business decisions. Counsel maintains that the director only looked at the petitioner's income tax returns and financial statements to

conclude that a business of the petitioner's size could not support a primarily executive or managerial position. According to counsel, the beneficiary "controls all managerial duties and possesses managerial discretion," and is not merely a first-line supervisor, as the director believed.

A review of the record in this case does not compel this office to overturn the director's decision to deny the petition. As shall be discussed, the petitioner fails to adequately demonstrate that the beneficiary devotes the primary amount of his time to executing managerial or executive functions.

I. EXECUTIVE CAPACITY

In order to be found eligible for this immigrant visa classification as an executive, the record must clearly show that the beneficiary *primarily* [emphasis added]:

- (A) Directs the management of the organization or a major component or function of the organization;
- (B) Establishes the goals and policies of the organization, component, or function;
- (C) Exercises wide latitude in discretionary decision-making; and
- (D) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

See. 8 C.F.R. 204.5(j)(2).

The petitioner fails to establish that the beneficiary works in a primarily executive role because it fails to establish that the beneficiary directs the management of the organization or a major component or function of the organization.

In order to show that the beneficiary directs the management of its operations, the petitioner must establish that the beneficiary plans, organizes, directs and controls it's operations through other individuals who are either on the company payroll or employed on a contractual basis. The petitioner submitted its 1999 corporate income tax returns, which showed that the petitioner paid the beneficiary a salary of \$32,004 and paid \$12,480 in salaries and wages (Line 13) to other employees. One of the employees, Sung Kang, was listed as the assistant manager and was paid \$2,880 in wages. The other employee, Jin Hwan Oh, was paid \$9,840 but his or her title and job responsibilities were not included in the record.

The petitioner has not clearly depicted its organizational

structure in order to convince the Service that the beneficiary directs the management of the organization. Although the petitioner submits evidence that it employed two individuals in addition to the beneficiary, the petitioner did not employ either individual on a full-time basis, and did not provide each individual's position title or an accompanying job description. Without a detailed listing of all employees, their titles and their job descriptions, it appears that the beneficiary, himself, performs the day-to-day functions of the company and, therefore, does not direct the management of the organization.

Additionally, the petitioner failed to state whether the beneficiary exercises wide latitude in discretionary decision-making and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

By not satisfying all elements of the regulation, the petitioner fails to show that the beneficiary merits classification as a multinational executive.

II. MANAGERIAL CAPACITY

In order to be found eligible for this immigrant visa classification as an manager, the record must clearly show that the beneficiary *primarily* [emphasis added]:

- (A) Manages the organization, or a department, subdivision, function, or component of the organization;
- (B) 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;
- (C) 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
- (D) Exercises direction over the day-to-day operations of the activity or function for which the employee has authority.

See. 8 C.F.R. 204.5(j)(2).

The petitioner also fails to show that the beneficiary functions primarily as a manager.

First, the petitioner does not explain, with any degree of detail, how the beneficiary manages the petitioner or a function of the petitioner. Both the petitioner and counsel merely state that the beneficiary "manage[s] and direct[s] [the] continuous business operation" without explaining how the beneficiary accomplishes this task. Such a statement does not provide any meaningful insight into how the beneficiary manages the petitioner.

Second and finally, the petitioner fails to present information to support its claim that the beneficiary supervises managerial, supervisory or professional employees, or manages an essential function.

Based on the above discussion, the director's denial of the petition on the basis that beneficiary does not currently work and will not continue to work in a primarily executive or managerial capacity is 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 met that burden.

ORDER: The appeal is dismissed.