U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: WAC 99 045 50011 Office: CALIFORNIA SERVICE CENTER Date: JAN 8 2001

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)

IN BEHALF OF PETITIONER:

[redacted]

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

Mary C. Mulrean, Acting Director
Administrative Appeals Office

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

The petitioner, [redacted], is a California corporation that claims to engage in the wholesale and retail sale of bakery products. It also claims to own a restaurant, [redacted]" The petitioner seeks to employ the beneficiary as its president and, therefore, endeavors to classify him 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 of the California Service Center denied the petition because the petitioner failed to establish that the beneficiary is currently and will continue to be employed in an executive or managerial capacity for the U.S. entity. 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 it was unrealistic for a restaurant to have only two employees, one of whom works in a primarily executive or managerial position. The director also noted that the petitioner submitted a very brief job description, which described the beneficiary's job duties without any specificity.

On appeal, counsel claims that it is reasonable for the petitioner to require the services of a president. According to counsel, the beneficiary establishes staffing and personnel policies; sets and implements financial and business goals; negotiates contracts with vendors and suppliers; obtains lines of credit and other financial matters; and develops business opportunities. Counsel further

notes that "[t]he day-to-day functioning of the company is specifically not handled by the beneficiary and the beneficiary does hold significant executive responsibilities."

Counsel's arguments are not persuasive. Based upon the evidence in the record, the Service cannot find that the beneficiary functions in a primarily executive, or managerial capacity.

Pursuant to 8 C.F.R. 204.5(j)(5), a petitioner must submit a job offer in the form of a statement, which clearly describes the duties to be performed by the alien. In a letter accompanying the initial I-140 petition, the petitioner described the beneficiary's duties as follows:

> As President of the U.S. subsidiary, [redacted] directs overall operations including financial matters, staffing and personnel policies, the setting and implementing of business and financial policies and goals, contract negotiations and acts as liaison with the parent company in Poland.

The director was correct in finding that the job description was vague and did not provide any insight into the beneficiary's daily activities. By using general terms such as "directs overall operations" and "setting and implementing" to describe the beneficiary's job duties, the petitioner has merely paraphrased the Service's definition of executive capacity. Without a detailed description of the beneficiary's daily activities, the Service cannot conclude that the beneficiary's duties fall within the definition of executive capacity.

Moreover, counsel claims on appeal that the day-to-day functions of the company are not handled by the beneficiary; yet, neither counsel nor the petitioner identify the individual(s) who performs the day-to-day activities of the company. Although the petitioner submitted copies of its quarterly federal income tax return, which shows that the petitioner employs two individuals (the beneficiary and one other employee), the petitioner did not provide the name, title or job description of the second employee. The petitioner also failed to describe how the second alleged employee functions within the organization's hierarchy. As the petitioner failed to show how the day-to-day functions of the organization are being executed, the Service must conclude that the beneficiary performs all of the nonqualifying duties, which contrary to counsel's claim, are not "significant executive responsibilities."

The lack of a clear job description that outlines the alleged executive and managerial duties of the beneficiary, combined with an organizational structure that is comprised of only two employees, leads the Service to conclude that the beneficiary's primary role within the company does not fit the definition of executive capacity or managerial capacity noted in Sections

101(a)(44)(A) and (B) of the Act. Therefore, the director's decision is affirmed.

Beyond the decision of the director, the petitioner failed to establish that (1) it had been doing business for at least one year at the time the petition was filed; and (2) the beneficiary was employed with the foreign entity in an executive or managerial capacity for at least one year in the three years immediately preceding the beneficiary's entry into the U.S.

In order to establish that it had been doing business for at least one year at the time it filed the petition, the petitioner must present evidence that it had been engaged in the regular, systematic and continuous provision of goods and/or services. 8 C.F.R. 204.5(j)(2). The petitioner claims to own and operate a bakery plant, which sells bakery products. The petitioner also claims to own and operate a restaurant called "[redacted] The petitioner, however did not present any evidence that either of these two entities are operational. First, the petitioner did not submit a lease for the bakery plant or the restaurant, or submit photographs to show that either enterprise exists. Second, the petitioner did not present any evidence, such as payroll records, to show that it has employees in the plant or the restaurant. Finally, the petitioner did not submit any invoices for its bakery plant to show that it engages in the wholesale and retail sale of bakery items. Without documentary evidence to show that the petitioner had been engaged in the regular, systematic and continuous provision of goods and/or services for at least one year at the time it filed the petition, the Service cannot find that the petitioner had been doing business.

The petitioner also failed to establish that the beneficiary was employed by the foreign entity in an executive or managerial capacity. The petitioner claimed in a letter accompanying the initial I-140 petition that the beneficiary was employed by the foreign entity from 1995 until his transfer to the U.S. in December 1997. The petitioner did not state the beneficiary's title or describe, in any way, the beneficiary's job responsibilities. Without a detailed description of the beneficiary's role with the foreign entity, the Service cannot find that the beneficiary was employed in an executive or managerial capacity with the overseas entity for at least one year in the three years immediately preceding the beneficiary's entry into the U.S.

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.