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: NEBRASKA SERVICE CENTER Date: JAN 8 2001

IN RE: Petitioner:
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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Mary C. Mulrean, Acting Director
Administrative Appeals Office

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

The petitioner is an Illinois corporation that claims to provide legal consulating and business brokerage services. 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 Nebraska 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. The petitioner submits letters from two law firms about the beneficiary's role with the U.S. entity.

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 evidence in the record indicated that the beneficiary spends 80% of his time providing legal services to the petitioner's clients. According to the director, an individual who provides the goods and/or services of a company does not work in a primarily executive or managerial capacity.

On appeal, counsel claims that in order for the beneficiary to retain his license to practice law in the People's Republic of China, the beneficiary must provide legal services to clients. Counsel also argues that managing partners of many U.S. law firms routinely provide legal services to their clients. Counsel refers the Service to two letters that the petitioner submits on appeal,

which, counsel believes, support his claims.

Counsel's arguments are not persuasive. The Service cannot find that the beneficiary functions in a primarily executive or managerial capacity under U.S. immigration law.

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

> *Executive capacity* means an assignment within an organization in which the employee primarily:
>
> (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.
>
> *Managerial capacity* means an assignment within an organization in which the employee primarily:
>
> (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.

The director was correct in finding that the beneficiary's duties do not fall within the definition of executive capacity. According to the petitioner and counsel, the beneficiary "spends 80% of his time on legal consulting service[s]." The beneficiary also "conducts research or feasibility study of doing business in

China." If the beneficiary spends 80% of his time providing the petitioner's essential services, then he cannot primarily direct the management of the organization, or its goals and policies.

The petitioner also failed to establish that the beneficiary's duties are contained within the definition of managerial capacity.

First, as 80% of the beneficiary's time is spent providing legal advice to clients, then he cannot primarily manage the organization, or a department, subdivision, function or component of the organization.

Second, the petitioner submitted two organizational charts for the U.S. entity, which contain conflicting information. On one organizational chart, the beneficiary supervises a support staff and an assistant consultant. In the other organizational chart, the beneficiary supervises a consulting service department, business operation manager and an independent contractor. The discrepant information on each organizational chart does not enable the Service to determine whether the beneficiary supervises other supervisory, managerial, or professional employees. The petitioner also failed to show that the beneficiary manages an essential function because the evidence indicates that the beneficiary, himself, performs an essential function (e.g., providing legal advice to clients), rather than managing that function through other employees.

Third, the petitioner failed to establish that the beneficiary functions at a senior level within the organization because a clear and credible organizational chart has not been submitted.

Finally, the evidence is not persuasive in establishing that the beneficiary exercises discretion over the day-to-day operations, because it appears that the beneficiary performs the actual day-to-day operations, which are the dispensing of legal advice to clients.

Although the beneficiary may refer clients to other attorneys, both the petitioner and counsel have clearly established that the beneficiary is personally responsible for providing legal advice to clients as his primary job duty. As stated by the director in his decision, an individual who performs the services and/or provides the goods of a company does not work in a primarily executive or managerial capacity.

Counsel refers to an unpublished decision involving an employee of the Irish Dairy Board. In the Irish Dairy Board case it was held that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee of the petitioning organization, as his primary assignment was the management of a large organization using multiple subcontractors to carry out the company functions.

Counsel has furnished no evidence to establish that the facts of the instant petition are in any way analogous to those in the Irish Dairy Board case. Furthermore, while 8 C.F.R. 103.3(c) provides that Service precedent decisions are binding on all Service employees in the administration of the Act, unpublished decisions are not similarly binding.

The record contains sufficient evidence to affirm the director's finding that the beneficiary does not work in a primarily executive or managerial capacity. The burden of proof in these proceedings rests solely 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.