U.S. Department of Justice

Immigration and Naturalization Service

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PUBLIC COPY

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

[redacted]

JAN 30 2001

File: [redacted] Office: NEBRASKA SERVICE CENTER Date:

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:

identification data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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, Nebraska Service Center. A subsequent appeal was summarily dismissed by the Associate Commissioner for Examinations on January 11, 2000 because counsel failed to submit a brief or otherwise identify any erroneous conclusion of law or statement of fact; however, it has been determined that the petitioner had timely submitted a brief. The matter will be reopened on Service motion pursuant to 8 C.F.R. 103.5(a)(5)(i). The matter is again before the Associate Commissioner on appeal. The appeal will be dismissed.

The petitioner is a Texas corporation that claims to manufacture wood products. The petitioner seeks to employ the beneficiary as its manager of component manufacturing 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 denied the petition because the petitioner failed to establish that the beneficiary will be employed in an executive or managerial capacity for the U.S. entity, and because a qualifying relationship did not exist. On appeal, counsel submits a brief. The petitioner submits evidence that outlines the ownership of the U.S. and foreign entities.

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 a qualifying relationship exists between the petitioner and the foreign entity, [redacted] located in Mexico. On appeal, counsel submits evidence that Ms [redacted] owns and controls both the petitioner and the foreign entity. As an affiliate relationship between the two companies exists, the prior decision of the director on this issue is withdrawn.

The next issue to be examined is whether the beneficiary will be employed in a primarily managerial capacity. Both counsel and the petitioner are seeking classification of the beneficiary as a multinational manager, not as a multinational executive.

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

> *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.

In his denial, the director concluded that the proposed employment of the beneficiary was not in a primarily managerial capacity because the beneficiary had previously been the recipient of an approved L-1A nonimmigrant visa petition as a specialized knowledge employee. According to the director, the record did not contain any evidence that the beneficiary had been promoted to a managerial position, and therefore, the classification of the beneficiary as a manager was inappropriate.

On appeal, counsel submits a letter from the foreign entity, which shows that the beneficiary was promoted to manager of product assembly in September 1995 upon his return to Mexico, and has been employed in this position since that time. Counsel contends that in this position, the beneficiary directs the management of a major component of the company, reports only to the vice president of operations or the president, and directs the day-to-day operations of his department.

Counsel's arguments are not persuasive. Although the beneficiary may have received a promotion upon his return to Mexico, the beneficiary's proposed employment with the U.S. entity is not in a primarily managerial capacity.

In the initial I-140 petition, the petitioner described the beneficiary's job duties as follows:

> The manager of component manufacturing is responsible for the assembling of the all [sic] the parts necessary for the manufacturing of cabinets and wood furniture. The manager of component manufacturing must be able to supervise the assembly of components such as doors, drawers, handles, face frames and other components that will be used in the production of cabinets and wood furniture.

The beneficiary's duties, as described by the petitioner, do not fall within the definition of managerial capacity outlined in 8 C.F.R 204.5(j)(2).

First, this job description does not establish that the beneficiary will manage a department or an essential function. The petitioner initially states that the beneficiary will be the individual responsible for assembling the parts, then subsequently states that the manager must be able to supervise the assembly of components. Such discrepant information does not clarify the beneficiary's alleged managerial role within the company. Although the petitioner deems this position to be managerial, it fails to describe the tasks that the beneficiary must execute on a daily basis in order to demonstrate that the primary focus of the beneficiary's duties are, in fact, managerial in nature.

Second, the petitioner submitted an organizational chart, which shows that the beneficiary will supervise a sanding/finishing manager, a door manufacturing manager, and a shipping department; however, the petitioner did not provide job descriptions for the two managerial positions and did not detail the types of positions in the shipping department. The petitioner also failed to submit information about the number and type of employees who are supervised by the sanding/finishing manager and the door manufacturing manager.

The Service will not be persuaded to find that the beneficiary supervises two managerial employees simply because those employees have managerial titles. Without job descriptions for the beneficiary's subordinate employees, the Service cannot conclude that the beneficiary supervises a staff of managers, supervisors or professionals.

Third, the petitioner failed to provide information concerning any authority the beneficiary may have over personnel decisions within his department, and to sufficiently explain the beneficiary's role within the company's organizational hierarchy or within the beneficiary's department.

Finally, the petitioner did not submit any specific information concerning the beneficiary's authority to exercise discretion over

the company's day-to-day operations. The petitioner merely stated that a manager of component manufacturing must be able to supervise. The petitioner did not indicate that the manager of component manufacturing will have the authority to direct the day-to-day operations.

The evidence in the record does not enable the Service to conclude that the beneficiary's primary role within the U.S. company fits the definition of managerial capacity noted in 8 C.F.R. 204.5(j)(2). Therefore, the director's denial of the petition on this issue is affirmed.

Additionally, while not addressed by the director in his denial, the record does not support a finding that the beneficiary was employed by the foreign entity in a managerial capacity for at least one year in the three years immediately preceding the initial I-140 petition.

The petitioner described the beneficiary's job with the foreign entity as [redacted] was solely responsible for the performance of his department..." Such a vague job description, which lacks any insight into the beneficiary's daily activities, is insufficient for establishing his employment in a managerial role with the foreign entity.

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.