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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]

JAN 2 2 2002

File: [redacted] Office: CALIFORNIA 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:

[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

Myra L. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center initially approved the immigrant visa petition. Upon subsequent review, the director determined that the petitioner was not eligible for the benefit sought and she served the petitioner with notice of her intent to revoke the approval of the preference visa petition, and ultimately revoked the approval of the petition on October 22, 1999. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner was incorporated under the laws of New York State and is engaged in the manufacture and export of shipping containers and fur garments. It seeks to employ the beneficiary as its vice president and, therefore, endeavors to classify the beneficiary as a multinational 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 revoked her approval of the petition because the petitioner failed to establish that the beneficiary is currently and would continue to be employed in a primarily executive capacity. On appeal, counsel submits a statement.

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 petitioner seeks the services of the beneficiary as a multinational executive, not as a multinational manager. In revoking her approval of the petition, the director noted that the petitioner employed only managerial-titled individuals within the company. The director stated that if all of the employees were managers, then no one would be available to perform the day-to-day tasks of the petitioning entity's operations. The director noted the petitioner's statement that the menial tasks were executed by

employees of the petitioner's New Jersey office; however, the director did not find this explanation to be persuasive or entirely realistic.

On appeal, counsel notes that the petitioner employs five individuals in its San Francisco office and eighteen individuals in its New Jersey office. Counsel argues that the director should have considered the eighteen individuals from the New Jersey office as the subordinate employees of the beneficiary. Counsel also calls the Service's attention to 8 C.F.R. 204.5(j)(4)(ii) and states that the number of employees alone cannot be the basis for determining the managerial or executive capacity of an employee.

Counsel's statement on appeal is not persuasive. While counsel argues that the Service cannot use the number of employees alone as the basis for determining whether an individual works in a primarily executive or managerial capacity, counsel, himself, argues on appeal that because the beneficiary allegedly supervises twenty-three employees in both the San Francisco and the New Jersey offices, the beneficiary is, therefore, working in a primarily executive capacity. The Service does not concur with counsel.

The number of employees in a company may not be a determining factor; however, the position titles and job duties of each employee are crucial pieces of evidence that the Service looks to in determining whether an individual functions in a primarily executive capacity. In the instant petition, the petitioner only lists the names and titles of the four employees in the San Francisco office who are allegedly subordinate to the beneficiary. The petitioner does not describe, with any degree of detail, the job duties of each position. For example, the petitioner lists the title of "Operations Manager" and lists the job duties as "in charge of accounting" and "in charge of container spare parts sales." The term "in charge of" does not provide the Service with the depth of detail that it requires in order to determine the nature of the employee's duties, such as whether the duties are professional, supervisory or managerial. Additionally, the petitioner does not provide any information about the titles and job duties of the eighteen employees in the New Jersey office whom the beneficiary allegedly supervises. Again, without this type of information, the Service cannot conclude, with any degree of certainly, that the beneficiary functions primarily as an executive.

Furthermore, in a June 17, 1999 response to the director's request for additional evidence (RFE), the petitioner stated the following about its staff within the San Francisco office:

> Although the titles of all five employees are managers, there are two employees doing more of the secretarial and clerical work, which are the two operations

> managers. Due to the fact that this is a very small office, **all employees do most of their own clerical work as well as other administrative duties such as answering the phone, faxing, filing, etc.** (Emphasis added.)

The petitioner informed the director that all five of its employees, including the beneficiary, execute their own clerical work. However, the petitioner did not reconcile how the beneficiary can perform his own clerical work yet function primarily as an executive within the organizational structure.

In order to be found eligible for this immigrant visa classification as an executive, the record must clearly show that the beneficiary *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.

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

The petitioner described the proffered position of vice president as follows:

> As vice president of the U.S. subsidiary company, directs and coordinates all aspects of management and operation of the U.S. subsidiary company, 100% owned by the parent company in Korea. Plans, develops, and establishes business policies and objectives. Reviews analysis, costs, operations, and forecasts data to determine progress toward the goals and objectives. Prepares monthly report to head office in Korea.

The beneficiary's job description is vague. Merely stating that the beneficiary "directs and coordinates all aspects of management and operation" of the petitioning entity is not enough to demonstrate that the beneficiary primarily functions as an executive. The petitioner fails to explain in detail how the beneficiary directs the management of the petitioner's operations, such as detailing the type of duties that the beneficiary executes on a daily basis. The petitioner also could have explained how

the beneficiary directs the management of the organization by describing the types of job duties executed by the company's employees. Without more detail about the beneficiary's job duties and the job duties of the employees, the Service is not persuaded to find that the beneficiary functions primarily as an executive. Accordingly, the director's decision will not be disturbed.

It appears that in this case, the director erred in approving the I-140 petition upon its initial filing. Because an approved visa petition is merely a preliminary step in the visa application process and does not guarantee that the visa will be issued, the director had the discretion to revisit the approval and issue the notice of intent to revoke for good and sufficient cause. The final notice of revocation was also proper.

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.