B4

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 16 2003

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)

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center initially approved the employment-based preference visa petition. After further review, the director concluded that an error was made in approving the petition, and she properly served the petitioner a notice of her intent to revoke the approval of the petition. The director ultimately revoked the petition's approval on April 10, 2002. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a California corporation that seeks to employ the beneficiary as its general manager. The petitioner, therefore, endeavors to classify the beneficiary as a multinational executive or manager 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 the approval of the petition on the grounds that: (1) the proffered position is not in an executive or managerial capacity; (2) the beneficiary was not employed in an executive or managerial capacity for at least one year in the three years preceding his entry into the United States in a nonimmigrant status; and (3) no qualifying relationship exists between the United States and overseas entities.

On appeal, the petitioner submits a statement and two copies of recent Quarterly State Wage Reports (SW-2). The petitioner states that the director's revocation of the petition's approval is difficult to believe considering that it has been in business for 10 years and the beneficiary has been employed in L-1A nonimmigrant status for several years.

Section 203(b) of the Act, 8 U.S.C. § 1153(b), 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.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act,

8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. 8 C.F.R. § 204.5(j)(1). No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in an executive or managerial capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

Pursuant to section 205 of the Immigration and Nationality Act, 8 U.S.C. § 1155, a director may revoke the approval of a visa petition at any time for "good and sufficient cause." The director's realization that she made an error in judgment in initially approving a visa petition may, in and of itself, be good and sufficient cause for revoking the approval, provided the director's revised opinion is supported by the record. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The petitioner states that it is a subsidiary of Shandong International Economic & Technical Cooperation Corporation (Shandong) of the People's Republic of China (China), and that it operates as a commercial fish farm. According to the petitioner, the beneficiary currently occupies the proffered position in L-1A nonimmigrant status, and it is offering to employ the beneficiary in the same position on a permanent basis at a salary of $21,600 per year.

The first issue to be examined in this proceeding is whether the proffered position of general manager is in an executive or managerial capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

> The term "managerial capacity" means an assignment within an organization in which the employee primarily-
>
> (i) manages the organization, or a department, subdivision, function, or component of the organization;
>
> (ii) 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;
>
> (iii) 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

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

At the time of filing the I-140 petition with the California Service Center on August 2, 2000, the petitioner's staffing levels consisted of five employees. The petitioner described the proffered position as follows:

(a) Manage all aspects of the petitioner's business managing the fish farm and retail store.
(b) Supervise and control the work of other supervisory and professional employees and manage all essential functions of the petitioner.
(c) Have the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) for other employees he directly supervises; and
(d) Exercise discretion over the day-to-day operations of the business.

The director initially found that the proffered position was in an executive or managerial capacity based upon the above job description. On February 12, 2002, however, the director issued to the petitioner an Intent to Revoke, stating that the petition's approval was in error. Regarding the nature of the proffered position, the director stated that the petitioner did not have a

reasonable need for an executive or manager because the petitioner was engaged in raising fish. The director provided the petitioner an opportunity to submit evidence showing why the proffered position was managerial or executive.

In response, the petitioner submitted an organizational chart, which listed the names and job titles of its employees. This chart indicated that the beneficiary, as the general manager, supervised one assistant general manager in charge of production, who, in turn, supervised two production managers and one sales manager. The chart also indicated that that production managers supervised one production worker, and that the sales manager supervised one sales representative. The petitioner failed to submit job descriptions for these employees or any additional evidence relating to whether the proffered position was in an executive or managerial capacity.

The director denied the petition, in part, because the proffered position was not in an executive or managerial capacity. The director noted that the organizational chart was not supported by any documentary evidence, such as the petitioner's payroll records. Additionally, the director stated that the petitioner failed to show that the majority of the beneficiary's time would be devoted to executive duties, or that it had the organizational complexity to support a primarily executive or managerial position.

On appeal, the petitioner does not specifically address the director's reasons for denying the petition on this ground. The petitioner states that it has been in business for more than 10 years and it has created and will create job opportunities. According to the petitioner, the beneficiary has been directing and supervising its operations and is expanding the petitioner's business operations. The petitioner claims that the revocation of the petition's approval will place its operations in "a very difficult situation." The petitioner submits copies of two SW-2 forms to show that it is a viable company and has employees.

The proffered position does not merit classification as an executive or managerial position because the beneficiary's job description is a reiteration of the definition of managerial capacity. The petitioner does not specify any activities associated with the broad job responsibilities of managing all aspects of the fish farm and retail store, and exercising discretion over the day-to-day operations. Without more specific information regarding how and at what frequency the stated duties are performed, the petitioner's job description of the proffered position merely reiterates the definition of managerial capacity; it does not establish that the position offered to the beneficiary involves primarily managerial duties. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103,(E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990).

Additionally, evidence regarding the petitioner's staffing levels fails to establish that the beneficiary would be employed as more than a first-line supervisor. 8 C.F.R. § 204.5(j)(4)(i). To

establish that the beneficiary would direct managerial, supervisory or professional employees, the petitioner must not only specify the number of individuals that the beneficiary would supervise, but it must also provide the names, titles, and job responsibilities of these individuals. The beneficiary shall not be considered to be acting in a managerial capacity merely on the basis of the number of employees that he supervises or directs. Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C).

The petitioner indicated that the beneficiary would supervise one assistant general manager in charge of production, who, in turn, would supervise two production managers and one sales manager. The petitioner also indicated that that production managers would supervise one production worker, and that the sales manager would supervise one sales representative. The petitioner, however, did not provide these individuals' job descriptions. Absent a listing of the specific duties of persons supervised by the beneficiary, the petitioner has not shown that the beneficiary would act as more than just a first-line supervisor. *See Republic of Transkei*, 923 F. 2d 175, 177 (D.C. Cir. 1991).

The Bureau notes that the petitioner submits copies of its current payroll records on appeal, which show that the petitioner employs seven individuals. The Bureau, however, cannot consider any facts that come into being subsequent to the filing of a petition. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). At the time of filing the petition, the petitioner employed only five individuals. The petitioner has not established that these employees occupied supervisory, managerial or professional positions. Accordingly, the director's decision to deny the petition on this basis shall not be disturbed.

The second issue in this proceeding is whether the beneficiary was employed in an executive or managerial capacity for at least one year in the three years immediately preceding his entry into the United States as a nonimmigrant.

At the time of filing the petition, the petitioner stated that the beneficiary was employed as the vice manager of the finance department for at least one year in the three years prior to the beneficiary's entry into the United States as a nonimmigrant. The petitioner described the beneficiary's overseas position as follows:

(a) Managed all finances of the employer.
(b) Supervised and controlled the work of other supervisory employees and managed all essential functions within an affiliate of the petitioner.
(c) Had the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization[)] for other employees he directly supervised; and
(d) Exercised discretion over the day-to-day operations of the subsidiary for which he had authority.

The director initially found that the beneficiary's overseas position was in an executive or managerial capacity based upon the above job description. On February 12, 2002, however, the director issued to the petitioner an Intent to Revoke, stating that the petition's approval was in error. Regarding the nature of the beneficiary's overseas position, the director stated that the petitioner submitted a job description that parroted the definition of managerial capacity. Also, the director found that the petitioner did not submit an organizational chart to show the beneficiary's level of authority within the overseas entity's organizational hierarchy. The director concluded that there was insufficient evidence of the beneficiary's employment in an executive or managerial capacity for the overseas entity; in turn, the director provided the petitioner with an opportunity to submit evidence to rebut her conclusion.

In response, the petitioner submitted an organizational chart, which listed the names and job titles of the overseas entity's employees. This chart indicated that the beneficiary held the position of assistant manager within the department of finance and accounting, and supervised one general controller, two accounting employees, and one branch manager. These individuals supervised other employees who held titles such as cashier and bookkeeper. The petitioner indicated on the organizational chart that all of the employees held college degrees; however, the petitioner did not submit job descriptions for these employees or any additional evidence relating to whether the beneficiary's overseas position was in an executive or managerial capacity.

The director denied the petition, in part, because the beneficiary was not employed for the requisite period of time in an executive or managerial capacity. The director noted that the organizational chart was not supported by any documentary evidence, and that the beneficiary's job description merely reiterated the definition of managerial capacity.

On appeal, the petitioner does not specifically address the director's reasons for denying the petition on this ground. A review of the record indicates that the petitioner provided a job description that reiterated the definition of managerial capacity; it did not provide any insight into the beneficiary's daily activities in his overseas position, or describe the job duties of the individuals supervised by the beneficiary. In addition, the petitioner did not provide any documentary evidence, such as an employment verification letter from the overseas entity or copies of the overseas entity's payroll records, to demonstrate that the beneficiary held the claimed managerial position of vice manager of the finance department for at least one year in the three years immediately preceding his entry into the United States as a nonimmigrant. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Accordingly, there is insufficient evidence of the beneficiary's employment in an executive or managerial capacity for the overseas entity for the requisite period of time. Therefore, the petitioner has not overcome this basis of the director's denial.

The third and final issue is whether a qualifying relationship exists between the petitioner and the overseas entity. As previously stated, the petitioner claims that it is a subsidiary of Shandong International Economic & Technical Cooperation Corporation (Shandong) of China.

Pursuant to 8 C.F.R. § 204.3(j)(2):

> *Affiliate* means:
>
> (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
>
> (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity; . . . .
>
> *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

With the filing of the I-140 petition, the petitioner submitted copies of its Articles of Incorporation (Articles), which indicated that the petitioner issued 500,000 shares of common stock at one dollar ($1) per share. According to the Articles, the overseas entity purchased 350,000 shares of stock for $350,000, and five individuals purchased the remaining 150,000 shares. The petitioner did not submit any stock certificates, a corporate stock ledger, or any other documentary evidence to corroborate the statements made in the Articles. The petitioner did, however, claim that the overseas entity owned 70 percent of its outstanding shares of stock. The director initially found that a qualifying relationship existed between the petitioner and the overseas entity based upon the evidence of record. On February 12, 2002, however, the director issued to the petitioner an Intent to Revoke, stating that the petition's approval was in error.

Regarding the relationship between the two entities, the direct stated that the petitioner failed to submit any docume evidence such as copies of stock certificates, wire receipts, or bank statements, to show that the oversea actually paid for the petitioner's shares of stock. The c

concluded that there was insufficient evidence of a qualifying relationship between the U.S. and overseas entities, and the director provided the petitioner an opportunity to submit evidence showing that the claimed parent/subsidiary relationship exists.

In response, the petitioner submitted evidence that related to the overseas entity's investment in a company called Lu Island Development (LID). According to the petitioner, the overseas entity owned both the petitioner and LID, and the petitioner's fish farm business and its employees were originally under LID but were transferred to the petitioner in 1987. The petitioner also submitted copies of its stock certificates and one shareholder meeting, a bank statement of LID, and two checks written to LID for $500,000.

The director denied the petition, in part, because a qualifying relationship did not exist between the U.S. and overseas entities. The director stated that the petitioner failed to submit evidence that the overseas entity actually transferred money to capitalize the petitioner. The director acknowledged that the petitioner submitted evidence relating to LID; however, this evidence was deemed irrelevant to the relationship between the petitioner and the overseas entity.

On appeal, the petitioner does not specifically address the director's reasons for denying the petition on this ground. A review of the record indicates that the petitioner has not persuasively shown that the overseas entity actually paid for the petitioner's shares of stock. The documentation submitted in response to the Intent to Revoke related to LID, not the petitioner. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra*. As the record is presently constituted, no credible evidence of a qualifying relationship between the United States and overseas entities has been submitted.

The petitioner has not established that the beneficiary fits the definition of a multinational manager or executive that is found at section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). On appeal, the petitioner states that it "is hard to believe and unacceptable" that the Bureau would revoke its approval of the immigrant petition in light of its approval of an L-1A nonimmigrant petition on the beneficiary's behalf. However, each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the Bureau is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

This record of proceeding does not contain any of the supporting evidence submitted to the California Service Center in association with the L-1A nonimmigrant petition. Although the Administrative Appeals Office may attempt to hypothesize as to whether the prior approval was granted in error, it would be

inappropriate to make such a determination without reviewing the original L-1A nonimmigrant petition filing in its entirety. If, however, the L-1A nonimmigrant petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding that is now before the Administrative Appeal Office, the approval of the prior petition would have been erroneous. The Bureau is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I. & N. Dec. 593, 597 (Comm. 1988). Neither the Bureau nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied,* 485 U.S. 1008 (1988).

The petitioner must establish that the beneficiary qualifies for this immigrant visa regardless of any nonimmigrant petitions that the Bureau may have approved on the beneficiary's behalf. As discussed in the preceding paragraphs, the petitioner has not met its burden of establishing that either the proffered position or the beneficiary's overseas position is executive or managerial, or that it has a qualifying relationship with the alleged overseas entities. Despite the approval of an L-1A nonimmigrant petition on the beneficiary's behalf, the petitioner has not shown that the beneficiary merits classification for an immigrant visa as a multinational executive or manager.

In visa petition proceedings, 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. The petition is denied.