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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]

File: WAC 00 138 52699 Office: CALIFORNIA SERVICE CENTER Date: FEB 12 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)

IN 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 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the employment-based preference visa and the matter is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be dismissed.

The petitioner is a California import/export corporation that seeks to employ the beneficiary as its vice president and, 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 denied the petition on the basis that the proffered position is neither executive nor managerial in nature.

On appeal, counsel submits a brief. Counsel states, in part, that the proffered position involves directing the management of a major function of the petitioner.

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.

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 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).

The petitioner describes itself as an importer and exporter of wood products to and from the People's Republic of China (China) that is a wholly-owned subsidiary of Panyu Dalai Wooden Products Company of China. At the time of filing, the petitioner claimed to employ five persons and have a gross annual income in excess of

$164,000.[1] According to the petitioner, the beneficiary is currently employed by the overseas entity and it is offering her the permanent position of vice president at an annual salary of $30,000 per year. The petitioner describes the proffered position as follows:

> [The beneficiary's] duties include the following: After [the beneficiary] reports to the U.S. company, she will direct and manage the overall operation of the company. She will review the current corporate goals and policies of the company based on its performance and financial conditions in the last two years. She will then make necessary adjustments and changes accordingly. She will also direct the purchasing director of the company to research on market conditions, and review and approve the purchasing plans prepared by the purchasing director. She will be in charge of the finance of the company. She will review the company's financial reports, review the company's financial situation from time to time, prepare finance and budget control plans, and supervise the implementation of these plans. [The beneficiary] will have wide latitude in decision[-]making and in the hiring and firing of employees.

Regarding its staffing levels, the petitioner states that it employs a president, a purchasing manager, a purchasing director, an administrative/financial assistant, an import/export clerk, and a secretary. The petitioner explains that it currently does not have a vice president and it is seeking the beneficiary for this position because the board of directors has decided that the petitioner needs two executives. In an accompanying organizational chart, the petitioner indicates that its organizational structure consists of the president having direct supervisory authority over the purchasing manager and the purchasing director, and the proffered position having direct supervisory authority over the administrative/financial assistant, who supervises both the import and export clerk, and the secretary.

The director denied the petition for the petitioner's failure to demonstrate that the proffered position would involve the exercise

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[1] The Service notes that the petitioner claimed to employ five persons on the I-40 petition and in an accompanying letter in support of the petition. However, the petitioner indicated on its organizational chart that it employed six persons. Additionally, the petitioner submitted several Forms 941, Employer's Federal Income Tax Return, which indicated that it paid salaries or wages to six individuals. The petitioner will be considered to have six employees at the time of filing the petition on April 7, 2000.

of significant authority over generalized policy. Specifically, the director concluded that the beneficiary would be required to perform the tasks necessary to provide the services of the petitioner because there are insufficient personnel to execute the necessary day-to-day operating functions.

On appeal, counsel states that the petitioner submitted a detailed description of the proffered position's duties, and that these duties are primarily executive in nature. Regarding the petitioner's staffing levels, counsel states that the petitioner's business of importing and exporting wood products does not require a large number of staff, and that its current staffing levels are more than sufficient to meet its day-to-day operational goals. Counsel further asserts that the petitioner employs contractors such as accounting firms, customs declaration firms, banks, and shipping companies to meet the needs of its operations. According to counsel, the beneficiary would primarily direct the management of a major function of the petitioner's operations, which he refers to as "its financial budgeting and expenditure based on the petitioner's business operation."

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.

The Service cannot find that the proffered position primarily involves the high level responsibilities that are specified in the definition of executive capacity. The petitioner provides insufficient evidence regarding its claimed need for a second executive employee who primarily works in an executive capacity.

The petitioner states that the proffered position would entail directing the purchasing director in researching market conditions and preparing purchasing plans. The purchasing director's job description, however, does not indicate that he either researches market conditions or prepares purchasing plans. According to his job description, the purchasing director merely implements

purchasing plans, inspects suppliers' goods, places orders, drafts purchasing contracts, and ensures that goods are delivered on time. Nothing in the purchasing director's job description indicates that he is involved in any type of market research or in the preparation of purchasing plans. Rather, the position of purchasing director is, in essence, a sales and marketing position that does not have managerial level authority. Furthermore, the petitioner's organizational chart indicates that the president, not the proffered position, has direct supervisory authority over the purchasing director. The petitioner's job description for the proffered position contains elements that are inconsistent with its claimed organizational structure and the purchasing director's job description.

In addition, it is conspicuous that the petitioner describes the job duties of each employee except for the position of president. The petitioner only states that the individual who occupies the position of president is in L-1A status; it provides no job description. The only job description of the position of president comes from counsel, who states that the president "performs most of the executive duties of the company." The assertions of counsel, however, do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel does not explain how he can conclude that the president performs the executive level responsibilities of the petitioner's operations when the petitioner has never listed the president's duties. The Service cannot determine whether the proffered position would be in a primarily executive position when it fails to describe the job responsibilities of the other purported executive that it currently employs. 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).

Furthermore, counsel maintains that the proffered position would be responsible for directing the management of a major function of the petitioner, which counsel refers to as the petitioner's financial and budget planning. In contrast, however, the proffered position's job description states that the beneficiary would "direct and manage the overall operation of the company." The petitioner fails to clarify the beneficiary's exact job duties or level of authority within the organizational hierarchy. Similarly, the petitioner fails to explain why the proffered position would be responsible for directing and managing the petitioner's operations when it already employs a president who "performs most of the executive duties."

Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), provides that if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Service shall take into account the reasonable needs of the organization, component, or function in

light of the overall purpose and stage of development of the organization, component, or function.

While the board of directors has allegedly determined that the petitioner needs two executives in the petitioner's operations, the petitioner does not demonstrate that its need for a second executive employee is reasonable. The petitioner does not sufficiently detail the job responsibilities of its current employees or the responsibilities that the proffered position entails. Based upon counsel's brief statement about the president's duties, the duties of the proffered position appear to overlap with the president's duties. The petitioner's business of importing and export wood products would not require two individuals to essentially perform the same duties.

Additionally, although both the purchasing director and the purchasing manager hold managerial titles, the duties of each individual are not at a managerial level. The purchasing manager's job description indicates that he identifies suppliers, develops relationships with those suppliers, and negotiates purchase contracts. The purchasing director merely implements purchasing plans, inspects suppliers' goods, places orders, drafts purchasing contracts, and ensures that goods are delivered on time. Each position is a sales and marketing position. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed. Section 101(a)(44)(C), 8 U.S.C. § 1101(a)(44)(C).

Regarding its alleged contractual employees, the petitioner fails to submit documentary evidence of the contractual agreements that it allegedly has with the accounting firms, customs declaration firms, banks, and shipping companies, or identify the types of service(s) they provide. There is also no evidence of the type of control, if any, that the proffered position would exert over the contracted companies. Again, 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, id.*

The petitioner has not sustained its burden of establishing that the reasonable needs of the organization in light of its overall purpose and stage of development would require a position of vice president. For these reasons, the director's decision will not be disturbed.

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. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.
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