



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

File:

Office: VERMONT SERVICE CENTER

Date:

FEB 27 2003

IN RE: Petitioner:
Beneficiary:

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:

PUBLIC COPY

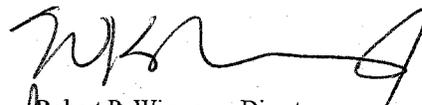
INSTRUCTIONS:

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based visa petition was approved by the Director, Vermont Service Center. Upon subsequent review, the director properly issued a notice of intent to revoke, and ultimately revoked the approval of the petition. The director's decision was affirmed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The petitioner is a corporation engaged in the distribution of fitness equipment. It seeks to employ the beneficiary as its president. Accordingly, it seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director initially approved the petition. Upon review of the record, the director determined that the petitioner had not established that the beneficiary had worked in a primarily managerial or executive capacity for the United States company. The AAO affirmed this determination on appeal.

Counsel requests that the previous decisions be reconsidered. Counsel asserts that the previous decision of the AAO was based on the following two grounds:

1. That the petitioner did not present any evidence that the beneficiary directs the management of the organization, or established the goals and policies of the petitioning entity; and
2. That the petitioner did not submit detailed job descriptions of the petitioner's employees.

Counsel asserts that the petitioner previously submitted detailed job descriptions for all its employees and also had submitted emails and facsimiles sent by the beneficiary to executive and managerial counterparts of prestigious companies demonstrating that the beneficiary functions primarily in an executive/managerial capacity. Counsel asserts that the Associate Commissioner based its decision on evidence that is inconsistent with what the petitioner provided.

It is noted that the petitioner does not clarify whether the beneficiary claims to be engaged in managerial duties under section 101(a)(44)(A) of the Act, or executive duties under section 101(a)(44)(B) of the Act. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

Furthermore, 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent

precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Although counsel has stated two grounds for reconsideration, counsel has not cited any pertinent precedent decisions that support his grounds for reconsideration. As noted by the AAO in the dismissal of the appeal, the petitioner provided a lengthy but uninformative description of the beneficiary's duties for the petitioner.

The petitioner's attempt to further describe the beneficiary's duties on motion does not contribute to a finding that the beneficiary is operating in a managerial or executive capacity. On motion, counsel for the petitioner submits a description of the beneficiary's typical day at the office, a sample of a project to demonstrate the role of the beneficiary in the company, copies of agreements for the year 2000, and a detailed job description of all current job positions in the company. Counsel concludes that the evidence previously submitted and the evidence submitted on motion when reviewed in its totality demonstrates that the beneficiary has been and will continue to be functioning in an executive/managerial capacity.

The information regarding the beneficiary's typical day at the office and the job descriptions for employees was previously available and could have been presented in the previous proceeding. The information concerning the sample project to demonstrate the beneficiary's role in the company is for a project apparently beginning sometime in 2000 and therefore is not relevant to the petition at hand. A petitioner must establish eligibility at the time filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45,49 (Comm. 1971). The petitioner has had several opportunities to present this information in the past but has failed to do so. The job descriptions provided by the petitioner are general in nature and do not clarify whether the beneficiary is performing managerial and executive duties with respect to the various activities or whether the beneficiary is actually performing the duties. Contrary to counsel's assertion that the facsimiles and e-mails submitted provide a picture of a person functioning in a primarily executive or managerial capacity, the majority of the documents are more indicative of an individual operating in a sales 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. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements



shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.

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