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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: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 15 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]

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 Texas Service Center denied the immigrant visa petition and the Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is again before the Associate Commissioner on motion to reconsider. The motion will be granted. The previous decisions of the director and the Associate Commissioner will be affirmed.

The petitioner is a Florida corporation that is engaged in providing travel-related services to German-speaking individuals. It seeks to employ the beneficiary as its president and, therefore, endeavors to classify the beneficiary 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 on the basis that the proffered position is neither executive nor managerial in nature. The Associate Commissioner concurred with the director's conclusion, citing that the petitioner failed to provide a comprehensive description of the beneficiary's job responsibilities.

On motion, counsel submits a statement and a job description for the proffered position.

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.

In dismissing the petitioner's appeal, the Associate Commissioner noted that the Service could not find the proffered position to be executive or managerial in nature because the petitioner had not provided sufficient evidence of the beneficiary's actual job duties. The Associate Commissioner stated that the petitioner did not provide any detail about the job duties that the beneficiary must execute in order to direct the management of the petitioner or its marketing efforts. Rather, the Associate Commissioner concluded that petitioner merely presented a broad

job description for the beneficiary that did not provide any insight into the beneficiary's daily activities. In addition, the Associate Commissioner asserted that the job descriptions for the petitioner's other employees failed to adequately establish that the day-to-day non-managerial duties were executed by the individuals who are subordinate to the beneficiary, particularly considering that two of the three employees work on a part-time basis. The Associate Commissioner found that the petitioner's alleged managerial employee (office and public relations manager), performed non-managerial functions, and the petitioner did not explain how the services that it contracted, such as pool maintenance and household repairs, was germane to its stated business plan.

On motion, counsel states that the job description for the beneficiary that the Associate Commissioner relied upon in his denial of the petition was prepared by the petitioner's prior counsel. Counsel submits a new job description for the proffered position that was prepared by the petitioner. The beneficiary's new job description follows:

Direct the management of the U.S. Operations (50%)

Planning, formulating and implementing administrative and operational policies and procedures. Approve and implement long range plans for company's growth and expansion in the U.S. Approve contracts and hiring of employees. Full responsibility for the U.S. operations.

Daily Activities:

1. Negotiate, review and approve contracts.
2. Review reports.
3. Verify that company is meeting operational goals.

Direct the marketing efforts of the company (30%)

Analyze marketing trends and determine direction of marketing efforts. Approve and oversee implementation of marketing strategies. Establish target contract goals for each month. Increase information about the West Coast are [sic] in [sic] media accessible to investors from overseas and attracting conventions to be held in this region.

Daily Activities:

1. Review marketing data from various sources.
2. Approve and oversee contracts for advertising.

Supervise the financial aspects of the company (20%)

Review monthly budgets and financial statements. Establish cost control guidelines. Approve expenditures and

investments and determine the best use of company resources.

Daily Activities:

1. Approve expenditures.
2. Verify expenditures meet cost control guidelines.
3. Review budget.

The petitioner's submission of a new job description for the proffered position does not overcome the previous decisions of the director and the Associate Commissioner that the beneficiary's job duties are neither primarily executive nor managerial in nature. As shall be discussed, this new job description does little to clarify the beneficiary's daily job activities for the petitioner's operations.

Pursuant to 8 C.F.R. 204.5(j)(2):

Executive capacity means an assignment within an organization in which the employee 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.

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 dismissing the appeal, the Associate Commissioner noted that the petitioner's job description for the proffered position did not provide any insight into the beneficiary's daily activities. The job description that the petitioner submits on motion also lacks details regarding the beneficiary's daily tasks; it is merely a reiteration of the regulatory definitions of executive capacity and managerial capacity.

For example, the petitioner cites one daily activity for the beneficiary as "[v]erify that company is meeting operational goals." The petitioner does not explain what activities the beneficiary executes to "verify" the company's compliance with its operational goals. Additionally, the daily activity of "[r]eview marketing data from various sources" is similarly vague. The petitioner has not identified what sources the beneficiary consults and the type(s) of data that the beneficiary examines, or explained how the beneficiary uses this data to execute his job responsibilities.

The petitioner's submission of a new job description for the beneficiary does not overcome the Associate Commissioner's prior decision. The petitioner has still not explained how the mundane duties of its operations are accomplished with two part-time employees and one full-time employee who solicits service providers and responds to client needs. Nor has the petitioner explained why it submitted evidence to show that it contracts pool maintenance and household repair services when it is in the business of providing travel-related services to German-speaking clients. The mere submission of a new job description for the proffered position does not adequately address the concerns of the Associate Commissioner that were expressed in his prior decision.

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 Associate Commissioner's March 25, 2002 decision is affirmed. The petition is denied.