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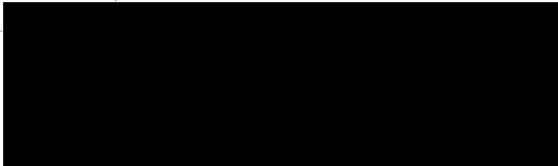
U.S. Department of Justice

Immigration and Naturalization Service

B4

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File:



Office: TEXAS SERVICE CENTER

Date:

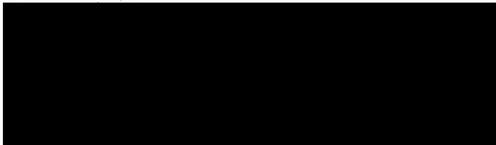
JAN 15 2003

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)

IN BEHALF OF PETITIONER:



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 employment-based preference visa and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a Florida corporation that is a global distributor of motor vehicles and motor vehicle spare parts and accessories. It seeks to employ the beneficiary as its international commercial sales manager 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 bases that (1) the beneficiary was not employed in an executive or managerial capacity for at least one year in the three years immediately preceding the beneficiary's entry into the United States in a nonimmigrant status, and (2) the proffered position is neither executive nor managerial in nature.

On appeal, counsel submits evidence that the director previously requested from the petitioner, but which counsel failed to present to the Service within the time provided. This evidence includes detailed information about the beneficiary's foreign position, an organizational chart for the petitioner's operations, evidence of wages paid to the petitioner's employees, and a detailed job description of 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.

The petitioner is a United States office of the parent company in Denmark that supplies vehicles, spare parts and related services to international companies and organizations. The petitioner employs 20 persons and has a gross annual income of \$22,462,907.

According to the petitioner, the beneficiary has been employed in the same capacity as the proffered position since September of 2000 in L-1A nonimmigrant status.

In the initial petition filing, the petitioner did not submit either a job description for the beneficiary's position with the foreign entity or a job description of the proffered position. Therefore, the director sent to the petitioner a Request for Evidence (RFE), asking the petitioner to submit detailed information about the beneficiary's foreign position, an organizational chart for the petitioner's operations, evidence of wages paid to the petitioner's employees, and a detailed job description of the proffered position.

Counsel responded to the director's RFE by submitting copies of documents from the beneficiary's L-1A nonimmigrant petition visa filing. Counsel informed the director that he was not contacting the petitioner about the RFE because it would change the petitioner's "perception and image of the smooth and efficient processing of their immigration petition with the Texas Service Center."

The director denied the petition because counsel's response to his RFE did not adequately address the director's request for information. The director noted that the petitioner did not submit the requested organizational chart so that the Service could determine whether the proffered position involves the supervision of managers or other professionals. The director also found that the letters in the record from the petitioner had described the proffered position in general terms and were, therefore, insufficient evidence of the beneficiary's employment in a primarily executive or managerial capacity.

On appeal, the petitioner submits evidence that the director had requested in his RFE. According to the petitioner, the beneficiary's employment with the parent company's Canadian branch was in the capacity of area export manager. In this position, the beneficiary's job duties were:

. . . executive management of the company's operations as well as management of the office and staff consisting of France Brosseau (Area Sales and Marketing Manager for French-speaking markets) as well as management of outside contractors acting on behalf of the company. Additional responsibilities included management of sales of vehicles and vehicle parts to commercial companies, management of contract negotiations for the supply of vehicles and vehicle parts to international companies and organizations, management of the preparation of all accounting details for year end, and management of day to day operations and activities in the company's office.

Regarding the proffered position, the petitioner describes the duties of the international commercial sales manager as follows:

Manage the commercial sales group and all major key accounts in the USA. This includes contract negotiations to supply companies . . . with equipment for international projects.

Coordinate the logistics departments in both our U.S. and Denmark offices to ensure shipment of all equipment. Ensure and oversee the financial department, including accounts payable and receivable, for efficient transactions with clients.

Work closely with and direct our company's marketing department to coordinate all marketing strategies to commercial clients.

Management of sales of vehicles and vehicle parts to commercial companies, management of contract negotiations for the supply of vehicles and vehicle parts to international companies and organizations, management of the preparation of all accounting details for year end.

Management and coordination of our logistics and spare parts departments to better manage and coordinate international sales to multinational companies as well as international organizations.

Daily duties include sales of vehicles, trucks & buses; managing and ensuring preparation, shipment, and final delivery of goods to clients; managing contract negotiations with major international oil and construction companies.

75% of [the beneficiary's] time will be devoted to sales management and management of contract negotiations with clients.

25% of [the beneficiary's] time will be devoted to managing logistics and spare parts sales to clients.

The petitioner also submits the requested organizational chart. According to this chart, the petitioner is organized into two departments - spare parts and sales. The proffered position is one of four positions with a managerial title within the sales department.

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.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. Champion World, Inc. v. I.N.S., 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir.(Wash.) July 30, 1991) (emphasis in original).

The petitioner has not adequately established that the beneficiary performed the high level responsibilities that are specified in the definition of executive capacity or managerial

capacity in his position with the foreign entity, or that he performs such responsibilities in the proffered position.

I. BENEFICIARY'S ROLE WITH THE FOREIGN ENTITTY

The petitioner presents a generalized description of the beneficiary's role as the foreign entity's area export manager. The petitioner repeatedly states that the beneficiary "manages" various functions such as outside contractors, sales of vehicles, and contract negotiations. However, simply stating that an individual manages a certain activity is not enough; it is merely a reiteration of the regulatory definition of managerial capacity. The petitioner must describe the duties that the beneficiary undertakes on a daily basis in order to manage an activity. As the record is devoid of specific information regarding how the beneficiary managed activities as the foreign entity's area export manager, the Service cannot find that the beneficiary was employed by the foreign entity in an executive or managerial capacity for at least one year in the three years immediately preceding the beneficiary's entry into the United States in L-1A nonimmigrant status.

II. BENEFICIARY'S ROLE WITH THE PETITIONING ENTITY

The petitioner's description of the proffered position, while lengthy, does not contain the level of detail that is needed in order to show that the beneficiary either directs the management of the organization, or a function or component of the organization on a primary basis. Additionally, the job duties of the proffered position are inconsistent with information that the petitioner provides in its organizational chart.

Regarding the job description itself, the duties of the proffered position are described in broad terms. The petitioner states that the beneficiary manages the commercial sales group, coordinates the logistics department and directs the marketing department; however, the petitioner does not identify the types of duties that the beneficiary executes in order to manage, coordinate and direct departments and functions. "Specifics are clearly an important indication of whether an applicant's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations." Fedin Bros. Co., Ltd. v. Sava, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), aff'd, 905 F. 2d 41 (2d. Cir. 1990).

It is noted that the petitioner has provided some specific examples of the beneficiary's daily activities. A review of these examples, however, reveals that such duties are neither executive nor managerial in nature. For example, the petitioner briefly states that the beneficiary's daily duties include selling vehicles, trucks and buses, and ensuring that products are delivered to customers. These daily activities fall within the realm of routine sales duties; they are not managerial or

executive duties. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. Matter of Church Scientology International, 19 I&N Dec. 593 (BIA 1988).

The petitioner's description of the proffered position is also inconsistent with the petitioner's organizational structure as depicted in its organizational chart. The petitioner ascribes two job duties to the beneficiary - coordinating the logistics department and directing the marketing department. A review of the organizational chart, however, reveals that neither a logistics department nor a marketing department exists. The organizational chart shows that the petitioner employs a logistics manager and a logistics assistant; however, these two individuals report to the petitioner's Chief Executive Officer (CEO), not to the beneficiary. Similarly, the organizational chart shows that the petitioner employs a Regional Marketing Manager who reports to the petitioner's CEO. However, a marketing department is not listed on the organizational chart. The petitioner's description of the proffered position does not realistically depict the beneficiary's role with its operations. The petitioner must clarify how the beneficiary is able to coordinate and direct two departments that are not listed as part of the petitioner's organizational structure. Accordingly, there is insufficient evidence to conclude that the proffered position meets the definition of executive capacity or managerial capacity found at 8 C.F.R. 204.5(j)(2).

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 its burden of showing that the beneficiary has the requisite executive or managerial employment with the foreign entity, or that the proffered position can be classified as a multinational executive or managerial position. For these reasons, the petition must be denied.

ORDER: The appeal is dismissed.