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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: NEBRASKA SERVICE CENTER Date: JAN 15 2003

IN RE: Petitioner: [redacted]
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:

[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

Myla L. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Nebraska Service Center denied the employment-based preference visa and affirmed his decision in a subsequent motion to reopen. The matter is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the petition will be remanded back to the director for entry of a new decision.

The petitioner is a branch office of L&T Information Technology Ltd., in Mumbai, India, which is engaged in software development consultancy. It seeks to employ the beneficiary as a project manager in its St. Louis, Missouri office 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 as an executive or manager with the foreign entity for at least one year in the three years immediately preceding the beneficiary's entry into the United States as a nonimmigrant, and (2) the proffered position is neither executive nor managerial in nature.

On appeal, counsel submits a brief and copies of documents already included in the record. Counsel states, in part, that the director cannot deny the petition for the petitioner's failure to submit evidence that was never stipulated in his request for evidence (RFE).

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 the initial petition filing, the petitioner described itself as a company that engages in software development consultancy with

1,200 employees and a gross annual income of $42 million. The petitioner stated that it was seeking the beneficiary's services as a project manager at an annual salary of $49,483. The duties of the proffered position were described, in part, as assigning work to team members, liaising with clients, and performing some systems analysis and programming tasks.

On June 19, 2000, the director sent to the petitioner a request for evidence (RFE). The director informed the petitioner that the evidence submitted with the initial petition did not establish that the proffered position could be classified as a multinational executive or managerial position. Accordingly, the director requested that the petitioner submit:

> . . .evidence to establish that the beneficiary qualifies under all four criteria stated above for either Manager or Executive. Submit a statement signed by an authorized official of the prospective employer describing the alien's employment abroad for the three years immediately preceding his/her entry as a nonimmigrant, <u>and</u> describing the intended employment in the U.S. The statement should include information concerning the dates of employment, job titles, specific job duties, types of employees supervised, if any, level of authority, and title and level of authority of the alien's immediate supervisor. Also submit an organizational chart showing the alien's positions abroad and in the U.S. in relation to others in the company.

(Emphasis in the original.) The petitioner complied with the director's request. Nevertheless, on October 24, 2000, the director denied the petition on the bases that neither the beneficiary's overseas position nor the proffered position involves primarily executive or managerial duties. In the denial letter, the director noted that on June 19, 2000, he requested evidence from the petitioner. The director described the evidence that he requested in the following manner:

> On June 19, 2000, the petitioner was requested to submit evidence to establish the professional status of the members of the team that the beneficiary will lead including their educational qualifications and a complete description of their duties. The petitioner was further requested to explain the beneficiary's level of authority over these employees and describe any personnel actions he may initiate. Finally, the petitioner was requested to submit an organizational chart showing the alien's position abroad and in the US in relation to others in the company.

In addition, the director found that the proffered position was

neither managerial nor executive in nature because the petitioner did not submit a business plan or a "comprehensive description of the petitioner's intended activities."

The petitioner appealed the director's decision. The director, however, considered the appeal as a motion to reopen or reconsider, citing that the appeal was not timely filed. Counsel noted in his appeal brief that the director could not deny the petition for the petitioner's failure to submit evidence that was never requested. The director responded by stating that "[t]he statute and regulations that govern the eligibility of each classification are published material available to public reading." Counsel further noted that as a large employer of H-1B nonimmigrant workers, the petitioner was well known by the Service; therefore, the director's request for the petitioner's business plan was unnecessary. The director responded to this statement by noting that "[w]hether the petitioner has submitted none or numerous petitions for any nonimmigrant or immigrant classification to the Service is a frivolous issue since each petition or application must be adjudicated on its own merits."

On April 16, 2001, counsel filed a motion to reopen, stating that the Service erred in finding that the appeal had not been timely filed. On April 3, 2002, the director concurred with counsel and concluded that the petitioner's appeal was timely filed. The director forwarded the record to the Administrative Appeals Office (AAO) for consideration of the petitioner's appeal.

It is clear from reading the RFE that the director never asked the petitioner to submit evidence to establish the professional status of the members of the beneficiary's team, the team members' educational qualifications, or a complete description of the team members' duties. It is also clear that the director did not request the petitioner to explain the beneficiary's level of authority over the team members or describe any personnel actions he may initiate. In the RFE, the director simply asked the petitioner to explain the types of employees that the beneficiary would supervise, his level of authority, and the title and level of authority of the beneficiary's immediate supervisor. Additionally, nowhere in the RFE does the director ask the petitioner to submit a business plan or evidence of its corporate activities.

The director's decision must be withdrawn because the petitioner was never asked to submit the evidence that the director cited in the denial letter. The case shall be remanded back to the director for entry of a new decision. The director may request any additional information or evidence that he deems necessary to assist him in reaching a determination. As always, the burden of proof rests with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The petition is remanded back to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the Associate Commissioner for review.