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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 01 126 50378 Office: CALIFORNIA 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

Mary L. Rosenberg

for 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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a California corporation that is engaged in the wholesale and retail distribution of pianos and other musical instruments. It seeks to employ the beneficiary as its 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 beneficiary is being offered the proffered position so that he may oversee the development and expansion of the petitioner's operations.

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 imports and exports pianos and other musical instruments, employs seven persons, and has a gross annual income in excess of $828,000. According to the petitioner, the beneficiary is currently occupying the proffered position of president as an L-1A nonimmigrant worker, which involves the following duties:

- Manage the retail store and leasing programs.
- Manage the Operation of US branch company.
- Oversee daily correspondence of domestic and overseas

business communications.

- Direct and receive report on visit to clients and to maintain good relationship with clients.
- Receive report on trade show arrangement and provide guidance.
- Review advertising policies and projected enhancement in revenues.
- Review important personnel decision and host company strategic meetings.
- Learn and research the business systems of USA.

The record also contains the petitioner's organizational chart, which indicates that the proffered position has supervisory authority over a sales department and a service department. According to the petitioner, the sales department is headed by a manager and staffed by one accountant and one salesperson, while the service department is headed by a manager and staffed by one receptionist and one piano teacher. The record does not contain job descriptions for any of these employees.

The director found that the proffered position was neither executive nor managerial in nature, and she denied the petition. The director concluded, in part, that the petitioner gave its employees "exaggerated titles" in order to comply with the regulations. The director also stated that "it is unnecessary (and doesn't make sense) to have three managers for a company made up of a total of seven employees."

On appeal, counsel states that the duties of the proffered position are managerial in nature because they involve developing sales, service and marketing methods for the petitioner's operations. Counsel asserts that the proffered position is responsible for managing the petitioner's operations and, as such, the director did not have any reasonable basis to conclude that the proffered position involves the day-to-day nonsupervisory duties. Regarding the petitioner's staffing levels, counsel states that the current staff is the "nucleus for an expanding business enterprise."

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's description of the proffered position does not contain the level of detail that is needed in order to show that the proffered position primarily involves the high level responsibilities that are specified in the definition of executive capacity or managerial capacity. The duties of the proffered position are described in broad terms.

For example, the petitioner claims that the proffered position involves the management of the retail store, leasing program and the petitioner's operations. The petitioner does not, however, identify the types of duties that the beneficiary would execute in order to manage three different functions, which include a

retail store and a leasing program. Similarly, the job duty of "directing reports" is ambiguous, as there is no indication who the beneficiary directs to prepare these reports nor the content of such reports. Finally, the job duty of "learn and research business system of USA" is not associated with someone who primarily performs executive or managerial tasks. The act of learning how business operates in the United States can be performed by any individual regardless of his or her job title or particular job responsibilities.

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). Here, the petitioner has not provided any specificity to the job description of the proffered position. Instead, the petitioner merely presents a list of generalized job duties that mimic the definitions of executive capacity and managerial capacity. The petitioner's statements are insufficient evidence of the proffered position's level of authority and daily activities. 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).

The petitioner's descriptions of its organizational structure and operations are similarly vague. First, the petitioner claims that the proffered position involves the management of a retail store, however, the petitioner's organizational chart does not indicate that a retail store exists. Second and more importantly, the organizational chart shows that the petitioner employs two managers, one accountant, one salesperson, one receptionist and one piano teacher. However, the job duties of these employees are unknown because the petitioner has failed to provide such information to the Service. The petitioner has not explained how these six employees provide the services of the petitioner's business and how their job responsibilities obviate the need for the beneficiary to become involved in the routine day-to-day activities of the petitioner's operations. The actual duties themselves reveal the true nature of the employment. Fedin Bros. Co., Ltd. v. Sava, supra. Here, the petitioner has not provided the actual duties of its employees and, therefore, there is no basis to find that the true nature of the proffered position is to execute primarily executive or managerial duties.

A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. Systronics Corp. v. I.N.S., 153 F.Supp.2d 7 (D.D.C. 2001). If staffing levels are used as a factor in determining whether an individual is an executive or manager, section 101(a)(44)(C) of the Act requires the Service to consider the reasonable needs of the

organization in light of its overall purpose and stage of development.

The staffing levels of the petitioner's operations are not a determining factor in the denial of the petition. Rather, it is the petitioner's generalized job description of the proffered position and its lack of job descriptions for its other employees that render the beneficiary ineligible for classification as a multinational executive or manager. The petitioner has not established its need for the services of a purported executive/managerial employee. For the reasons stated above, the petitioner has not met its burden of establishing that the proffered position is in an executive or managerial capacity.

Beyond the decision of the director, there is insufficient evidence to find that the beneficiary was employed in an executive or managerial capacity for at least one year in the three years immediately preceding his entry into the United States as a nonimmigrant. The record contains a *Certificate of Appointment* from the foreign entity, which states that the beneficiary was a manager with its operations. The foreign entity does not, however, describe the beneficiary's role with any degree of detail. The foreign entity simply states that the beneficiary "works hard," is "responsible and capable," and that he "led the company business to grow more prosperous day after day." None of these statements is persuasive evidence of the beneficiary's employment in an executive or managerial capacity; however, as the appeal is being dismissed on another ground, this issue will not be examined further.

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.