U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: WAC 01 218 54197 Office: CALIFORNIA SERVICE CENTER Date: MAY 7 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)

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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 preference visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration.

The petitioner was incorporated in 1989 in the State of Delaware and is claimed to be a subsidiary of [redacted] located in Taiwan. The petitioner is engaged in the business of property management and real estate development. It seeks to employ the beneficiary as its manager of condo development. Accordingly, the petitioner endeavors 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 determined that the petitioner had not established that the beneficiary had been or would be employed in a managerial or executive capacity.

On appeal, counsel or the petitioner submitted additional evidence in support of the petition.

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.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) 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;

(iii) 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

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

(i) directs the management of the organization or a major component or function of the organization;

> (ii) establishes the goals and policies of the organization, component, or function;
>
> (iii) exercises wide latitude in discretionary decision-making; and
>
> (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The director based the denial, in large part, on the type of business the petitioner proposes to conduct. Specifically, the director stated the following:

> The [real estate] industry is a service industry that does not involve or require "professional" employees. Therefore, the employees are considered non-professional . . . . Even though the petitioner may hire individuals with a university education, the employees would be considered non-professional as the profession is considered as service industry and non-professional nature.

Rather than making a determination of the professional nature of the beneficiary's subordinates based on their job descriptions and educational levels (both of which the petitioner provided in the response to the request for additional evidence), the director focused predominantly on the nature of the industry and concluded that those who are employed in the real estate industry, across the board, cannot be considered professional. The director's comments are inappropriate and incorrect. The petitioner has provided a detailed organizational chart illustrating the hierarchy of its organization, as well as the beneficiary's place within that hierarchy. After considering the numerous descriptions of the beneficiary's job, as well as the job descriptions of his subordinates, it is concluded that the beneficiary is relieved of performing non-managerial duties by virtue of the three professionals who are his immediate subordinates.

The director also based the denial on the petitioner's failure to submit Form DE-6 Quarterly Wage Reports from the State of California, as requested in the request for additional evidence. The petitioner did, however, submit the client copy of its state

quarterly wage report that was prepared by ADP, Inc. payroll services. This document lists all of the petitioner's employees, their quarterly wages, and their social security numbers. For purposes of this proceeding, this document, even though not the exact document requested earlier by the director, does satisfy the petitioner's burden of proof.

Contrary to the director's determination, it is concluded by the AAO that the petitioner has submitted sufficient documentation to establish that the beneficiary has been and will be employed in a capacity that is primarily managerial.

However, the record does not contain sufficient evidence to establish that the petitioner has a qualifying relationship with a foreign entity. Accordingly, this case will be remanded for the purpose of determining whether the claimed qualifying relationship exists. The director shall ask for any additional evidence deemed necessary in making such a determination and render a decision accordingly.

ORDER: The decision of the director, dated March 8, 2002, is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, shall be certified to the AAO for review.