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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

File: WAC 01 245 56374 Office: CALIFORNIA SERVICE CENTER Date: MAY 9 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 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 Director of the California Service Center denied the employment-based preference visa petition and the matter is now before the Administrative Appeals Office on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a California corporation that seeks to employ the beneficiary as its president. The petitioner, 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 ground that the proffered position is not in an executive or managerial capacity.

On appeal, counsel submits a brief. Counsel states, in part, that the director failed to request additional evidence regarding the beneficiary's proposed employment prior to denying the petition.

Section 203(b) of the Act, 8 U.S.C. § 1153(b), 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.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. 8 C.F.R. § 204.5(j)(1). No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in an executive or managerial capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The petitioner avers that it: (1) is a subsidiary of [redacted] of the People's Republic of China (China); (2) engages in international trade; and (3) employs five persons, including the beneficiary, who is currently occupying the proffered position as an L-1A nonimmigrant worker. The petitioner is offering to employ the beneficiary permanently at a salary of $42,000 per year.

The issue to be discussed is whether the proffered position of president is in an executive or managerial capacity.

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.

At the time of filing the petition with the California Service Center on June 4, 2001, the petitioner stated that the beneficiary, as its president, performed the following duties:

1. Make[s] corporate policies with Headquarters;
2. H[as] managerial responsibility of [sic] planning, directing and managing overall business operations of the U.S. company;
3. Plan[s], administer[s] and develop[s] the company's commercial and financial goals and objectives;
4. Exercise[s] discretion over the day-to-day operations of the business activities;
5. Exercise[s] discretion over the operations of [the] financial department;
6. Supervise[s] and schedule[s] the work of employees;
7. Exercise[s] authority to hire/fire executive staff; and
8. Report[s] to the parent company.

On December 27, 2001, the director requested additional evidence from the petitioner regarding the beneficiary's overseas position, whether a qualifying relationship existed between the petitioner and the overseas entity, and whether the petitioner was doing business. The director did not request any evidence regarding the beneficiary's proposed duties in the United States.

The director denied the petition on the basis that the proffered position was not in an executive or managerial capacity. The director noted that the petitioner did not have a reasonable need for an executive because "they [sic] are merely a small five-employee import/export business" and "all they [sic] do is buy and sell products." The director further stated that it was "contrary to common business practice" and defied "standard business logic" for a company, such as the petitioner's, to need an executive given its lack of organizational complexity.

On appeal, counsel states that the director did not provide the petitioner an opportunity to address the Bureau's concerns regarding the beneficiary's proposed duties. Counsel notes that, although the director requested numerous items of evidence in its request for evidence, it did not mention that the initial evidence regarding the beneficiary's proposed position was deficient. Counsel states that, as the president of the petitioning entity, the beneficiary merits classification as a multinational executive or manager.

Counsel presents a persuasive claim for remanding this matter to the director for further consideration. The purpose of the request for evidence is to elicit additional information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). As the director requested evidence that related only to the issues of the beneficiary's employment with the overseas entity, the relationship between the two entities, and the petitioner's business activities, the petitioner reasonably presumed that the evidence it had initially submitted regarding the beneficiary's proposed position was sufficient. The petitioner's presumption was reasonable, given the purpose of a request for evidence as described at 8 C.F.R. § 103.2(b)(8).

Accordingly, the director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the proffered position is in a managerial or executive capacity. Upon review of any additional evidence, the director shall enter a new decision. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of May 13, 2002 is withdrawn. The matter is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.