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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. Ave., 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 01 153 52141 Office: CALIFORNIA SERVICE CENTER Date: APR 18 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 employment-based immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The petition will be remanded for further action.

The petitioner seeks classification 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 petitioner seeks to employ the beneficiary as its vice president. The director found that the record fails to establish that the beneficiary would be performing duties that are primarily managerial or executive.

However, the director's decision was based on an incorrect review of the evidence of record. The director determined that the beneficiary's job in the United States would be to manage four people and the sales department in general. Contrary to these determinations, the petition indicates that the beneficiary's position in the United States was the executive position of vice president. A subsequent description of the beneficiary's duties (submitted in response to the Bureau's request for additional evidence) indicates that her position encompasses several aspects of the U.S. organization, not just sales. Furthermore, neither the petitioner's organizational chart nor the beneficiary's description of duties indicate that the beneficiary would be supervising four employees. The petition indicates that the petitioner currently employs 12 individuals and its organizational chart indicates that a total of 10 individuals are divided among the three departments which the beneficiary is claimed to direct. Thus, neither the petition nor the petitioner's organizational chart are consistent with the director's determination regarding the beneficiary's position in the United States or the number of employees supervised.

Additionally, the petitioner has repeatedly emphasized its claim that the beneficiary would be employed in an executive capacity, not in the capacity of manager. As asserted by counsel on appeal, the director has ignored the petitioner's claim and has apparently reviewed the record and made her conclusion in light of the regulatory definition for "manager" rather than the definition of "executive."

Accordingly, this petitioner is remanded to the Director, California Service Center, for the purpose of determining whether the beneficiary's duties are primarily managerial or executive. The director should note, however, that the description of the beneficiary's duties as provided in response to the director's request for additional evidence indicates that the beneficiary was not and currently may not be employed in a primarily executive capacity, as claimed. There also appear to be discrepancies between the employees listed in the beneficiary's payroll register

and the employees named in the petitioner's quarterly federal tax return for the December 2000 quarter. Furthermore, the petitioner has also failed to provide a description of duties for any of its employees, other than the beneficiary herself. Finally, the bank documents regarding the electronic transfer of funds indicate that the president of the petitioning organization, rather than the foreign entity, actually transferred the money which was used to purchase the petitioner's stock. This tranaction indicates that an individual, rather than the claimed foreign entity, may be the majority owner of the petitioner's stock. The director shall issue another request for additional evidence to clarify these and any other issues she deems relevant in determining the petitioner's eligibility for the requested employment-based visa.

For reasons stated above, the decision of the director will be withdrawn and the petition will be remanded for further action and consideration. The director shall then render a new decision.

In these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the director is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO, for review.