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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]

JUN 1 9 2003

File: WAC 01 282 57309 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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]

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 visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a government-owned foreign corporation organized in the country of Bangladesh and authorized to do business in the States of New York and California. It is an international airline carrier. It seeks to employ the beneficiary as district manager of its Los Angeles, California office. 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 primarily managerial or executive capacity. The director also determined that the petitioner had not established a qualifying relationship with the beneficiary's overseas employer.

On appeal, counsel for the petitioner asserts that the beneficiary is a manager and executive of the petitioner. Counsel re-submits previously submitted evidence in support of the assertion.

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 language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

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 as a multinational executive or manager. 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 a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The first issue in this proceeding is whether the beneficiary will perform primarily managerial or executive duties for the petitioner.

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 petitioner initially stated that the beneficiary would have the following responsibilities as its general manager at the Los Angeles Airport:

> [The beneficiary] will have responsibility for overseeing, through the administration of subordinates; [sic] all aspects of this company's ground service operations and the coordination of passengers and aircraft at Los Angeles. [sic] facilities. Also he is to open this new off line office. This will include establishing hiring and firing and [sic] employees, promotional policies, major financial and budgetary decisions, major decisions concerning coordination and implementation of Port Authority and Federal Airline Administration Policy and to [sic] enable the corporation to expand upon its market share, increase its level and volume of business and increase its corporate income and profitability. These activities will be accomplished through the setting and establishment of short term and long term corporate goals, policies and objectives that [the beneficiary] will develop.

The director requested a more detailed description of the beneficiary's duties for the petitioner, including the percentage of time the beneficiary spent in each of the listed duties. The director also requested the petitioner's organizational chart and a list and brief description of job duties for the employees subordinate to the beneficiary's position. The director further requested the California Forms DE-6, Quarterly Wage Reports for the previous four quarters.

In response to the director's request, the petitioner submitted a power of attorney document. The document, signed on behalf of the petitioner, gave the beneficiary power of attorney to establish the corporation's office in Los Angeles, register the office in California, and transact business in the name of the corporation. The petitioner also provided its organizational chart for its North America and Canadian operations. The chart contains a position identified as "Manager LAX." The chart does not reflect employees

subordinate to the position of "Manager LAX." The petitioner also indicated that the person in this position was responsible for "selling in Los Angeles," submitting sales reports, and marketing in Los Angeles. A second organizational chart depicted a position identified as "District Manager Los Angeles." The second chart showed a "Secretary cum Rsvn/Tktg Asstt." and "Accountant cum Rsvn/Tktg Asstt." subordinate to the beneficiary's position.

The petitioner also provided a lengthy description of the beneficiary's duties. The petitioner stated that the beneficiary's duties included "supervis[ing] the overall activities of the station and his area," and "prepar[ing] sales plan," and "supervis[ing] the activities of station accounts," and "maintain[ing] cordial relationship [sic] with travel agencies," and "suggest[ing] appointment of travel agencies," and "arrang[ing] necessary on the job training." In addition, the petitioner indicated that the beneficiary spent 25 percent of his time supervising ticketing and reservations, 15 percent of his time executing marketing and sales jobs, 15 percent of his time visiting travel agents to promote product and services, and 12 percent of his time telephoning, faxing, and using the internet.

The petitioner further provided a California Form DE-6 for the quarter ending March 31, 2001. The California Form DE-6 reflected the beneficiary as its only employee for the quarter. The petitioner did not provide any other California Forms DE-6.

The director noted that the record showed the beneficiary as the only employee. The director determined that the beneficiary would be doing the actual work of the operation rather than directing others. The director also determined that the record did not establish that the beneficiary would be employed as a manager of employees or as a functional manager. The director concluded that the petitioner had not established that the beneficiary would be employed in a primarily executive or managerial capacity.

On appeal, counsel for the petitioner asserts that the beneficiary is a manager and executive of the airlines and submits previously submitted documentation. Counsel also asserts that the petitioner is seeking approval to extend routes to Los Angeles and, if approved, would post additional employees to the Los Angeles office.

Counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the Bureau will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The initial description of the beneficiary's duties focussed on the beneficiary's duties in opening a new office. However, this visa classification requires an established office that has been engaged in doing business for one year prior to filing the petition. *See* 8 C.F.R. § 204.5(j)(3)(i)(D). The petitioner's description of the beneficiary's duties and the percentage of time spent on those

duties, in response to the director's request for evidence, indicated that the beneficiary was primarily performing the marketing, ticketing and reservations operations, promotion of the company, and administrative functions. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). As the director noted, the petitioner has provided no evidence of employees subordinate to the beneficiary's position who would actually perform the operational tasks of the company. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Ikea US, Inc. v. INS*, 48 F.Supp. 2d 22, 24-5 (D.D.C. 1999); *see generally Republic of Transkei v. INS*, 923 F.2d 175 (D.C. Cir. 1991) (discussing burden the petitioner must meet to demonstrate that the beneficiary qualifies as primarily managerial or executive); *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Counsel's assertion on appeal that the petitioner planned to hire or post additional employees to the Los Angeles office is not relevant to the case at hand. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner offered no evidence that the beneficiary managed and controlled a specific function of the petitioner.

The petitioner has not established that the beneficiary has been or would be employed in either a primarily managerial or executive capacity.

The second issue in this proceeding is whether the petitioner has established a qualifying relationship with the beneficiary's overseas employer. Counsel does not directly address this issue on appeal, but rather, re-submits evidence showing the United States petitioner is a branch office of the beneficiary's overseas employer.

The director failed to consider that the petitioner had submitted sufficient evidence to show that the Los Angeles office was a branch office of the beneficiary's overseas employer and not an affiliate or subsidiary. The Los Angeles office is not a separate and distinct legal entity from the beneficiary's overseas employer. The record sufficiently establishes that a qualifying relationship exists between the United States office and the beneficiary's overseas employer.

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, that burden has not been met.

ORDER: The appeal is dismissed.