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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: WAC 01 275 54863 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)

IN 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 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 appeal will be dismissed. The petition will be denied.

The petitioner is a California corporation that seeks to employ the beneficiary as its general manager. 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, the petitioner submits a statement and additional evidence. The petitioner states, in part, that the beneficiary's services are critical to its ongoing operations.

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 affiliated with the overseas entity, [redacted] of Canada; (2) is a specialized drilling contractor; and (2) employs three permanent staff members, including the beneficiary, who is currently occupying the proffered position as a nonimmigrant intracompany transferee (L-1A). The petitioner is offering to employ the beneficiary permanently at a salary of $42,022 per year.

The issue to be discussed is whether the proffered position of general manager 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 July 23, 2001, the petitioner described the job of general manager, in part, as:

> The General Manager effectively runs the U.S. operations. . . . As General Manager, [the beneficiary] reports directly to the company shareholders. She runs the U.S. operations and supervises all employees while they are working at the shop and yard in the U.S. [sic]. . . .

The director did not find the petitioner's description of the proffered position sufficient to determine whether the beneficiary would be employed in an executive or managerial capacity. Therefore, on January 2, 2002, the director requested additional evidence from the petitioner, to include:

- U.S. Business Organizational Chart: Submit a copy of the U.S. company's line and block organizational chart describing its managerial hierarchy and staffing levels. The chart should include the current name of all executives, managers, supervisors and number of employees within each department or subdivision. Clearly identify the beneficiary's position in the chart and list all employees under the beneficiary's supervision by name and job title. Also include a brief description of job duties, educational level, annual salaries/wages . . . and immigration status . . . for all employees under the beneficiary's supervision. Finally, explain the source of remuneration of all employees and explain if the employees are on salary, wage, or paid by commission. (Emphasis in original.)

- Form DE-6, Quarterly Wage Report: Submit copies of the U.S. company's California Employment Development Department (EDD) Form DE-6, Quarterly Wage Reports for all employees at the beneficiary's work site for the last four quarters that were accepted by the State of California.

> The forms should include the names, social security numbers and number of weeks worked for all employees.

In response, the petitioner submitted an organizational chart, which showed that the beneficiary, as the general manager, would hold the second highest position within the organizational hierarchy. The chart also indicated that the beneficiary would supervise one operations manager and one administrative assistant, a position that, at the time the organizational chart was prepared, was not yet occupied. In addition, the chart listed the positions of driller and driller helper as being subordinate to the operations manager.

The petitioner described the position of operations manager as one that carries responsibility for field operations. According to the petitioner, the operations manager works closely with the general manager to coordinate new projects and assign employees to work sites, among other duties. The petitioner also submitted a new job description of the general manager position, which listed numerous duties that the beneficiary would be required to perform. The duties included, but were not limited to: reviewing solicitations; preparing bids; assigning personnel and equipment to a job; arranging for local, county and state permits; briefing employees; arranging for timely arrival of materials, parts, and drilling supplies to jobsite; performing adminstrative duties such as authorizing payroll and responding to inquiries; monitoring operations; formulating or helping to formulate a budget; maintaining an occupational health and safety program; conducting employee performance reviews; hiring and firing employees; generating new business through advertising and networking; and providing information to clients and potential clients.

The director denied the petition on the basis that the proffered position was not in an executive or managerial capacity because the petitioner did not have the organizational complexity to warrant such a position.

On appeal, the petitioner's president states that, because he is often out of the United States, he must rely upon the general manager to operate the company. According to the petitioner's president, the general manager makes day-to-day decisions, schedules projects with clients, provides quotes to current and potential clients, and monitors drilling projects. The petitioner's president maintains that the beneficiary supervises a managerial employee and that the size of the petitioner's operations should not determine whether the beneficiary functions primarily as an executive or manager. He also asserts that the beneficiary has "essential proprietary knowledge" of the petitioner's business operations. On appeal, the petitioner submits copies of policies and procedures, as well as manuals that the beneficiary has written for the petitioner's operations.

The petitioner correctly asserts on appeal that the size of the petitioner 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. *See* Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). Instead, the duties of the proffered position must be the critical factor. *See* Sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. §§ 1101(a)(44)(A) and (B).

The petitioner's president states that the beneficiary plays a vital role in the petitioner's continued operations. Although the Bureau does not disagree with the president's assessment of the beneficiary's value to his company, the evidence fails to show that the beneficiary would perform the high level responsibilities that are specified in the definition of executive or managerial capacity. It is evident from the list of the beneficiary's duties that she would perform tasks that enable the petitioner to provide its services to clients. According to the petitioner's president, the beneficiary, in the role of general manager, calculates and prepares quotes for clients, procures the appropriate permits, and responds to inquires from current and potential clients, among other duties. Although the beneficiary also creates and implements policies, and hires and fire employees, her managerial duties are ancillary to her primarily job responsibilities, which are to perform tasks that enable the petitioner to provide its services to the general public. As such, the proffered position is not in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm. 1988).

As the record is presently constituted, there is insufficient evidence that the beneficiary would primarily direct the management of the petitioner's operations or manage the operations. Therefore, the petitioner has not demonstrated that the position offered to the beneficiary is in an executive or managerial capacity.

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. The petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition is denied.