

MAR 11 2009

Top Set International, Inc. v. Neufeld, No. 07-56314
Pregerson, J., dissenting:

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

I dissent. Yu entered the country in 2000 and lives here with her husband and two children. I would hold that the AAO's determination was arbitrary and capricious because it failed to adequately consider the evidence Yu presented regarding her qualifications as an executive or manager. While Top Set did recite the statutory and regulatory requirements for Yu's position, it went further to specifically describe some of Yu's many job duties. These duties include planning and designing a computer system, planning and designing an in-house employee training program concerning Top Set's products and services, and developing a plan to expand Top Set's marketing capabilities. These are all duties consistent with an executive or managerial position. Accordingly, the record requires me to conclude that Yu was performing as an executive or manager of Top Set.