U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC 00 099 50784 Office: Vermont Service Center Date: JAN 8 2001

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy
Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The United States company, [redacted], is stated to be engaged in the business of importing and selling children's furniture. It seeks to employ the beneficiary temporarily in the United States as vice president and national sales manager of its new office. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel argues that because this is a new office situation, the beneficiary performs some non-managerial duties. Counsel further states that later on, such duties will be undertaken by a personnel manager who will be hired for that purpose.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

8 C.F.R. 214.2 (l)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

> A) Sufficient physical premises to house the new office have been secured;
>
> B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
>
> C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
>
> > (1) The proposed nature of the office describing the scope of the entity, its

organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The United States company was established in 2000 and states that it is a 100 percent owned subsidiary of [redacted] located in Denmark. The petitioner seeks to employ the beneficiary for three years at a yearly salary of $84,000 plus commissions.

In his decision, the director concluded that the U.S. company could not support a managerial or executive position within one year of its operation because of the nature of its business and the size of the company. The director further concluded that the petitioner had not established that the beneficiary's day to day activities would be primarily managerial or executive in nature.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in the proposed position in the United States in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

"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:

> "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 record contains a description of the beneficiary's duties in the proposed position in the United States as follows:

> [The beneficiary] will be responsible for the local day to day management of [redacted] and will report directly to the President of the U.S. subsidiary and CEO of the parent company. He also will be over-all responsible for the staff, budget and economy of [redacted] as well as being responsible for the marketing and sale of [redacted] products. He will also be responsible for planning and budgeting for the U.S. subsidiary as well as fiscally accounting to the parent company.

On appeal, the president of the petitioning entity states that:

> The employment agreement requires that the Beneficiary report directly to the Board of Directors, and gives him full discretion to manage the subsidiary, subject only to

> the control of the Board of Directors, and gives him full discretion to manage the subsidiary, subject only to the control of the Board of Directors, reserving only the types of decisions, which are generally reserved for a company's Board of Directors.
>
> He has full signatory authority on the subsidiary's bank account and is responsible for preparing budgets, and financial reporting to the parent company.
>
> [The beneficiary] is expected to use his discretion in managing the establishment, start-up and development of [redacted] Inc., and has been assigned the function of locating and negotiating a contract for lease of office and retail space for the subsidiary (a certified copy of the office lease signed by [the beneficiary], is enclosed herewith). He is responsible for negotiating with contractors on tenders and bids for refurbishing the store.
>
> He is responsible for locating adequate warehouse space and negotiating a contract therefor.
>
> [The beneficiary] is also responsible with recruiting and hiring local employees as office personnel and salespersons (please note the attached advertisement).

Counsel argues that the beneficiary will be supervising a personnel manager who will be responsible for such duties as the hiring and supervising of initial personnel.

Despite counsel's contention, the additional information provided on appeal is not sufficient in overcoming the objections of the director. Counsel's merely restating portions of the Service's definition of a manager and executive is not sufficient in demonstrating the beneficiary's managerial and executive responsibilities. As stated by the director, the description of the beneficiary's duties is too general and vague and does not convey any understanding of exactly what the beneficiary will be doing on a daily basis. It must be evident from the documentation submitted that the majority of the beneficiary's actual daily activities will be primarily executive or managerial in nature. The petitioner has provided no comprehensive description of the beneficiary's duties to establish this.

Further, although it is stated that the beneficiary will supervise a personnel manger, it has not been sufficiently demonstrated that this employee is a subordinate who will relieve the beneficiary from performing nonqualifying duties such as that of a salesperson. The petitioner has not demonstrated that the beneficiary will be functioning at a senior level within an organizational hierarchy

other than in position title. Based on the evidence submitted, it cannot be found that the beneficiary will be employed in a primarily managerial or executive capacity, or that the U.S. company will support such a position within one year of operation. For this reason, the petition may not be approved.

Another issue in this proceeding, not raised by the director, is whether the beneficiary has been employed abroad in a primarily executive or managerial capacity. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.