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U.S. Department of Justice

Immigration and Naturalization Service

D7

[redacted]

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

File: WAC 99 087 52574 Office: CALIFORNIA SERVICE CENTER Date: 11 JAN 2002

IN RE: Petitioner
Beneficiary: [redacted]

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

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

Robert P. Weimann, Director
Administrative Appeals Office

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

The petitioner is described as a marketing and export business. The petitioner seeks to continue the employment of the beneficiary in the United States as its marketing manager. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a managerial capacity.

On appeal, the petitioner disagrees with the director's determination and asserts that the evidence submitted establishes that the beneficiary is employed in a managerial capacity.

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 and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
>
> (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

The issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed in a primarily managerial or executive 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

iii. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In the petition, the petitioner described the beneficiary's job duties as developing marketing plans and sales campaigns, supervising sales promotions, analyzing sales reports, implementing marketing plans, directing and supervising the deputy manager and sales representatives and representing the company in business negotiations. The director requested that the petitioner provide an organizational chart describing its managerial hierarchy and staffing levels, including a detailed description of the beneficiary's job duties. The director also requested payroll

ledgers and other evidence to show that the petitioner had employees. In response the petitioner provided an organizational chart that indicated it had four employees, a president, the beneficiary as its marketing manager, a sales representative, and an engineer. The petitioner also provided a brief description of the employees job duties and Internal Revenue Service W-2 Forms for the years 1996 and 1998.

The director determined that the petitioner had failed to establish that the beneficiary was managing a subordinate staff of professional, managerial or supervisory personnel who relieved him from performing non-qualifying duties.

On appeal, counsel asserts that the petitioner has provided sufficient evidence that the beneficiary has been employed and will continue to be employed in the United States in a managerial capacity.

Counsel's assertion is not persuasive. The petitioner's description of the beneficiary's job duties is insufficient to warrant a finding that the beneficiary has been or will be employed in a managerial capacity. The beneficiary's duties as outlined are vague and general and do not provide comprehensive data about the beneficiary's daily activities. It appears, at most, the beneficiary will be performing operational rather than managerial duties. The petitioner has provided insufficient evidence to establish that the beneficiary has been or will be managing or directing the management of a function, department, subdivision or component of the company.

Further, the petitioner has not provided evidence that the beneficiary will be managing a subordinate staff of professional, managerial or supervisory personnel who relieve him from performing non-qualifying duties. Again, the beneficiary is the individual performing the necessary tasks for the ongoing operation of the company. As noted by the director, the sales representative and engineer appear to be part-time employees, requiring that the beneficiary perform the functions of the organization rather than primarily directing or managing those functions through the work of others.

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.