D7

U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: EAC 99 120 52239 Office: VERMONT SERVICE CENTER Date: JAN 22 2002

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

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 sustained.

The petitioner is engaged in the business of import and export of chemical products, oils, petroleum, petrochemicals, agricultural goods and fertilizers, spare parts and raw materials. The petitioner seeks to continue the beneficiary's employment as its president. 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.

On appeal, counsel for the petitioner asserts that the director's decision was arbitrary and capricious and ignored the totality of evidence submitted.

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 petitioner is a New Jersey corporation wholly owned by a foreign entity incorporated in Australia. The petitioner seeks to continue the employment of the beneficiary an additional two years as its president.

The issue in this proceeding is whether the petitioner has established that the beneficiary 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 and reply to the director's request for evidence, the petitioner described the beneficiary's job duties in detail and ascribed the number of work hours per week to each of the beneficiary's tasks. The petitioner also provided the number of individuals employed by it and a comprehensive description of their duties broken down by the number of hours attributed to each of their tasks.

The director determined that the number of individuals employed by the petitioner was confusing. The director also indicated that the petitioner had not provided a complete position description for all of its employees in the United States nor a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis. The director concluded that the record did not establish that the beneficiary would be employed in a managerial or executive capacity.

On appeal, counsel identifies the number of individuals employed by the petitioner and the time period for which they were employed. Counsel also points out that the confusion regarding the number of employees may have arisen because the number of employees was slightly different on the date the petition was filed and the date the response to the director's request for evidence was provided. Counsel also notes that the petitioner specifically did not include its part-time accountant as an employee in its statement. Counsel also re-submits the job descriptions with hourly breakdown for specific tasks for each of the petitioner's employees, including the beneficiary.

Counsel's statements are persuasive. On review of the complete record, the petitioner has provided sufficient information to demonstrate that the beneficiary is acting in an executive capacity. The petitioner's description of the beneficiary's duties, supported by documentary evidence, provides sufficient information that she directs the management of the petitioner, that she establishes the petitioner's goals and policies, that she exercises wide latitude in discretionary decision-making and that she receives only general supervision from the petitioner's stockholders. The petitioner has also clarified its number of employees, though the record remains insufficient to determine that the beneficiary is also acting in a managerial capacity.

On review of the record of this proceeding, the petitioner has sufficiently demonstrated that its management staff will relieve the beneficiary from performing non-qualifying duties. The petitioner has provided the Service with a sufficient account of the beneficiary's responsibilities to determine that the beneficiary meets the criteria of the executive definition. Based on the evidence submitted, it is found that the beneficiary has been and will be employed in an executive capacity. The petition will be approved.

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 been met.

ORDER: The appeal is sustained.