D7

U.S. Department of Justice

Immigration and Naturalization Service

identification 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: LIN-98-234-52360 Office: Nebraska Service Center Date: 14 MAR 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)

Public Copy

IN BEHALF OF PETITIONER: Self-represented

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

for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is engaged in the manufacture and sale of bicycle parts. The petitioner seeks to employ the beneficiary temporarily in the United States as its president and management specialist for two years. The director determined that the petitioner had not established that the beneficiary will be employed primarily in a managerial or executive capacity. The director also determined that the petitioner had not established that a qualifying relationship exists between the United States and foreign entities.

On appeal, the petitioner states that he has been advised that the beneficiary would qualify for treaty investor status rather than L-1 status. No additional information was provided. It must be noted that there are no provisions for an L-1 petition to be converted into an application for an E-2 treaty investor. Consideration in this case must be limited to the issue of the beneficiary's eligibility for status as an L-1 nonimmigrant.

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.

The first issue in this proceeding is whether the beneficiary will be employed primarily in a 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 United States petitioning entity was incorporated on September 5, 1996. The petition indicates that the petitioning entity is a subsidiary of Ziegler-Lam Cycling, Inc. (Canada). The petitioner seeks to employ the beneficiary for a two-year period without wages.

The Petition for a Nonimmigrant Worker (Form I-129) was filed on August 10, 1998. The director states in his decision that the beneficiary does not qualify as an L-1 intracompany transferee. On appeal, the petitioner has not provided any information, or evidence in rebuttal to the director's findings. Further, the beneficiary states in his letter dated June 29, 1999 that he has

been advised by counsel that he qualifies for E-2 treaty investor status rather than L-1 status. The beneficiary goes on to state that he will submit forms for treaty investor status since he has invested $664,000 into the U.S. company. Since the petitioner did not submit any information or evidence to rebut the director's decision, the petition may not be approved.

Another issue in this proceeding is whether a qualifying relationship exists between the U.S. and foreign entities. Once again, the petitioner did not submit any information or evidence in rebuttal to the director's finding. For this additional reason, the petition may not be approved.

In visa petition proceedings, the burden of proof 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.