U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: SRC 01 249 55618 Office: TEXAS SERVICE CENTER Date: FEB 26 2003

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 that 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 that 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 that 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 Mark L. Rosenberg

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a retail grocery store that seeks to employ the beneficiary temporarily in the United States as its president and managing director. The director determined that the petitioner had not provided evidence that the beneficiary would be employed in a managerial or executive capacity.

On appeal, counsel states that INS erred in it's determination that the alien beneficiary (L-1A Applicant) is not being offered a position in a "managerial capacity." Counsel further states that substantial documentation showing the managerial nature of the beneficiary's duties were submitted. Counsel indicates that the beneficiary is willing to accept approval of the visa petition for one year instead of the requested three years in order to have more time to put his business plan into affect, and to show the INS even more evidence of the managerial nature of his position after one year, on the filing of an extension.

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)(1)(ii), in part, states:

> Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge. 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 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.

The petitioner described the duties of the offered position as follows:

- Exercise overall control and responsibility for the

employment and termination of all employees.

- Open and close store daily.
- Remove, review and install security surveillance (time-lapse) tapes.
- Contact suppliers by personal visits and via phone/fax/e-mail to discuss status of accounts, prices, delays, problems, volume discounts, etc.
- Conduct weekly facilities maintenance check and ensure that proper hygiene standards are maintained; A/C vents cleaned, display refrigerators/freezers are operational, blown bulbs replaced, etc.
- Generate and sign cheques for goods/merchandise orders, other supplies, utility payments, etc. Supervise rotation of goods.
- Generate daily and weekly sales reports. Review and reconcile.
- Produce daily and weekly credit card sales receipts batch reports. Review and reconcile.
- Conduct daily back up of all transactions on computer systems.
- Reconcile daily sales with receipts after closure each evening.
- Remove cash stored on premises, prepare deposit slips and take to bank for lodgment.
- Prepare weekly payroll for all employees.
- Sort, reconcile and prepare weekly sales reports, purchase reports, deposits/bank lodgments, etc. <u>for accountant</u>.

. . . . . 70%

- Purchase and pick-up selected goods/merchandise for which there are no local distribution/delivery.
- Contact suppliers in Jamaica: oversee ordering, accounts status, delivery, price discounts, availability of seasonal goods/merchandise, etc.

. . . . . 20%

- Liaise with inspectors and other municipal offices to ensure that all required licenses and permits are current. (Note: The Florida Department of Agriculture requires that there be a licensed Food Manager for the business to operate.)

The petition shows that the corporation employed three persons at the time of filing. The petitioner provides an organizational chart showing that the beneficiary would supervise five persons in the offered position, an accountant, a restaurant sales representative, a supervisor and cashier, a meat counter attendant and cashier, and an assistant meat counter attendant and handyman. The restaurant sales representative position is shown as being vacant and the record indicates that the position would be filled

in the future.

The record shows the petitioning firm was incorporated on August 6, 1999. The U.S. Corporation Income Tax Return for 2000 shows the corporation had gross receipts or sales of $196,946 and paid no salaries and wages or compensation to officers during the entire year. This petition was filed on August 21, 2001.

In this case, the listing of the positions currently filled and potentially filled is insufficient to warrant a finding that the beneficiary will be employed in a managerial or executive capacity. It appears that the beneficiary would be performing the necessary operations of the petitioner. The petitioner has provided no persuasive description of the beneficiary's duties that would demonstrate that the beneficiary will be managing or directing the management of a function, department, subdivision or component of the company. The petitioner has not shown that the beneficiary will be functioning at a qualifying senior level within an organizational hierarchy. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that the beneficiary has been employed in a qualifying managerial or executive capacity abroad. Additionally, the record does not contain sufficient documentation to establish that a qualifying relationship exists between the petitioner and a foreign firm, corporation or other legal entity. See 8 C.F.R. § 214.2(l)(1)(ii)(G). As the appeal will be dismissed for the reasons stated above, these issues 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.