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U.S. Department of Justice
Immigration and Naturalization Service



OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
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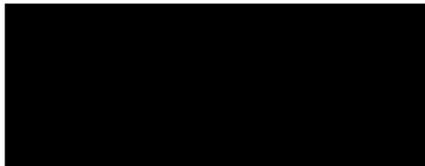
Date: JAN 10 2003

IN RE: Petitioner:
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:



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

Myna L. Roseley
for Robert P. Wiemann, 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 a firm specializing in importing, exporting and distributing products. It seeks to employ the beneficiary in the United States as its vice president of international marketing. 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 the petitioner has submitted sufficient evidence to demonstrate that the beneficiary will be employed in an executive or managerial capacity. Counsel further states that the beneficiary qualifies as a functional manager as he is responsible for managing two persons who will alleviate the beneficiary from performing non-qualifying or general duties. Counsel submits the resumes to these two persons and indicates that they hold degrees related to their positions.

Counsel refers to several unpublished Service decisions including one involving an employee of the Irish Dairy Board. In the Irish Dairy Board case, it was held that the beneficiary met the requirement of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee of the petitioning organization. However, counsel has furnished no evidence to establish that the facts of the instant case are in any way analogous to those in the Irish Dairy Board case. Simply going on record without supporting documents is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, while 8 C.F.R. 103.3(c) provides that Service precedent decisions are binding on all Service employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel also cites IKEA US, Inc. v. U.S. DOJ, INS, 48 F.Supp.2d 22 (D.D.C. 1999) but fails to explain how that decision is relevant to this case.

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 describes the beneficiary's prospective job duties in the United States as follows:

1. Meet with clients and potential new clients at sales meetings within and outside the United States for the marketing of hook and loop fasteners, elastic tapes and allied products. He will negotiate with clients as to prices and sales efforts (15% of beneficiary's time will be spent in this duty).
2. Develop and plan strategies for more efficient distribution process of products. This includes monitoring the distribution of the products being imported and exported, advising distributors of policies, operating procedures to insure functional effectiveness of business and developing information concerning planning and developing of international business modifications and expansions. Reviews operation record to evaluate effectiveness (30% of beneficiary's time will be spent in this duty).
3. Plans and executes advertising policies of organization, conferring with department heads to discuss new accounts and to outline new policies or sales promotion campaigns (10% of beneficiary's time will be spent in this duty).
4. Delegates responsibilities to two (2) other employees, namely Raman L. Kothari (commercial manager) and Dina Ascencio (Assistant Office Manager) (10% of beneficiary's time will be spent in this duty).
5. Review and analyze marketing budgets for the purpose of planning new marketing strategies (5% of beneficiary's time will be spent in this duty).
6. Develop and coordinate marketing strategies for the products to other countries. This includes gathering data on other competitors and analyzing their prices,

sales and methods of marketing and distribution (20% of beneficiary's time will be spent in this duty).

7. Exploring new business opportunities (10% of beneficiary's time will be spent in this duty).

The record indicates that the beneficiary would be supervised by the Chief Operating Officer who, in turn, is supervised by the president of this corporation which has a total staff of eight persons. The petitioner indicates that the beneficiary would supervise a commercial manager and an assistant office manager in his role as vice president of international marketing. The resume of the commercial manager indicates that he has attained a bachelor's degree in accounting. However, no evidence was forwarded to substantiate that credential. The resume of the assistant office manager indicates that he completed micro computer operations courses and high school.

Counsel's assertions concerning the managerial and executive nature of the beneficiary's future duties are not persuasive. The petitioner's descriptions of the beneficiary's proposed job duties are not sufficient to warrant a finding of managerial or executive duties. It is noted that the assertions of counsel do not constitute evidence. Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 BIA 1980). Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

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. As the appeal 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.