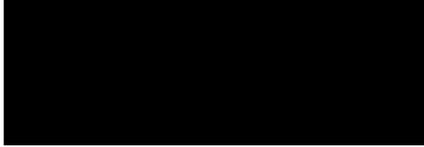


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



APR 10 2003

File: LIN-01-067-53422 Office: Nebraska Service Center Date:

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)

ON BEHALF OF PETITIONER:



PUBLIC COPY

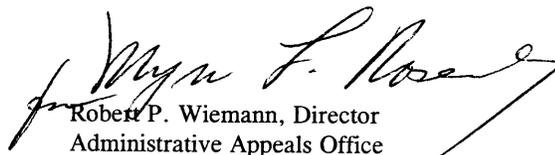
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner, a distributor of "datalogging" data equipment, seeks authorization to employ the beneficiary temporarily in the United States as its business development director. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

On appeal, the petitioner argues that the beneficiary will be employed in a primarily managerial or executive 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.

Regulations at 8 C.F.R. § 214.2(1)(3) state 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 (1)(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.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United

States: however, the work in the United States need not be the same work which the alien performed abroad.

The U.S. petitioner states that it was established in 1976 and that it is an affiliate of [REDACTED] located in London, England. The petitioner declares three (3) employees and a gross annual income of approximately \$550,000.

At issue in this proceeding is whether 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:

"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.

In describing the beneficiary's proposed duties with the U.S. entity the petitioner states, in pertinent part, that:

The company would like to employ [the beneficiary] in the capacity of Business Development Director in the Lake Oswego office of [REDACTED]. In this capacity, he will be responsible for all commercial aspects of the Company's business in its world-wide operations. He will be responsible for market and product development in the United States, including sales and marketing management, budget setting and monitoring, acquiring and retaining staff, and full profit and loss responsibility for all commercial business operations. More importantly, he will transfer his knowledge and managerial experience to expand the U.S. operations.

In a letter dated January 24, 2001, the Service requested that the petitioner submit additional evidence to corroborate the claim to eligibility.

In response to a request for additional information, the petitioner submitted an organizational chart of the proposed U.S. entity structure showing the beneficiary as manager directing a subordinate Technical Manager and a subordinate Marketing Manager. In addition, the petitioner submitted an organizational chart depicting the beneficiary's current position for the foreign entity as well as position descriptions for the individuals who currently report to the beneficiary at the foreign entity. In addition, the petitioner submitted employer tax documentation for the quarter ending December 31, 2000. This documentation indicated that the petitioner had three employees.

On appeal, counsel states that the beneficiary qualifies as a "functional manager." Counsel further contends that the petitioner

is dependent upon numerous "subcontractors," who receive direction from the beneficiary. Counsel concludes by stating:

[The beneficiary] qualifies for L-1A status as a manager and executive. He manages and supervises professionals holding bachelors degrees and performing professional functions. Moreover, the beneficiary qualifies as an L-1A because he satisfies the requirements of a functional manager. He performs executive tasks, he is a senior executive within the organizational hierarchy and manages an important function of the company.

Counsel submits significant evidence of the beneficiary's current position including a breakdown of tasks performed by the beneficiary in his current position for the foreign entity. Counsel also submits manning charts for Unidata Group Holdings Limited (foreign entity), and an organizational chart and minutes of a board of director's meeting indicating that Unidata Group Holdings Limited owns 95% of Unidata America, Inc.

Counsel further submits a summary of the day to day tasks currently performed by the beneficiary and the day to day tasks proposed as the duties the beneficiary will perform in the United States.

In describing the beneficiary's duties in the United States, counsel proffers the following:

Summary Description

Responsible for all commercial aspects of the company's business in its world-wide operations. Market and product development in the U.S., [i]ncluding Sales and Marketing management, budget setting and monitoring, acquiring and retaining staff, full Profit and Loss responsibility for all commercial business operations.

Day to day Tasks	Approx. % of time spent
Prospect follow up	25%
Customer follow up	10%
Sales administration	5%
Office administration	5%
Raising customer questions	5%
Following up customer questions	5%

Raising Sales invoices	5%
Sales visits to customers	5%
Attending trade shows	15%
Negotiations with customers	5%
Head Office liaison	5%
Customer support	5%
Correspondence	5%

On appeal, counsel claims that the beneficiary is managing a "function" and is therefore qualified for the benefits sought. However, when managing or directing a function, the petitioner is required to establish that the function is essential and the manager is in a high-level position within the organizational hierarchy, or with respect to the function. The record must demonstrate that the beneficiary will be primarily managing or directing, rather than performing, the function. Although it is indicated that the petitioner has three employees, it has not been sufficiently demonstrated that these employees, contrary to counsel's assertion, are a subordinate staff of professional, managerial or supervisory personnel who relieve the beneficiary from performing nonqualifying duties. Although the petitioner claims that the beneficiary also manages "sub contractors" to perform the sales functions, the record is void of any evidence to corroborate this claim. The record contains no copies of any contracts, no sub contractor related expenses are claimed in the tax documentation provided and no reflection of any time that will be spent by the beneficiary in his purported day to day activities that is related to the acquisition or management of sub contractors.

The record as presently constituted is not persuasive in demonstrating that the beneficiary will be employed in a primarily managerial or executive capacity. The fact that an individual oversees a small business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(44)(A) and (B) of the Act. The record does not establish that the majority of the beneficiary's duties will be primarily directing the management of the organization.

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties such as prospect follow up, customer follow up, sales administration,

office administration, "raising" customer questions, following up customer questions, raising sales invoices, sales visits to customers, attending trade shows, and negotiations with customers would be nonqualifying and tend to support the assertion that the beneficiary and his subordinates are personally performing the sales and marketing functions of the U.S. entity and further tends to dispel any existence of sub contractors to perform such functions. Reliance on the use of the title "Manager" is not persuasive.

The record contains insufficient evidence to demonstrate that the beneficiary has been or would be employed in a managerial or executive capacity. As described, the record indicates that a preponderance of the beneficiary's duties will be directly providing the services of the business. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary would be primarily engaged in managing a department, subdivision, function, or component of the company. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title.

Based on the evidence submitted, it cannot be found that the beneficiary has been and will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the record has not demonstrated that the beneficiary has been employed abroad in a qualifying managerial or executive capacity. As the appeal will be dismissed for the reason 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.