

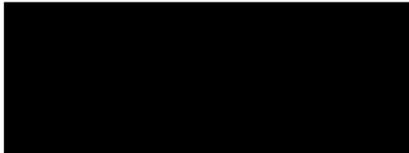


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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: LIN-99-051-50944

Office: Nebraska Service Center

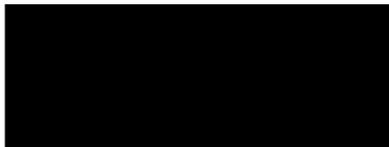
Date: APR 13 2001

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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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. Wiemann
for Robert P. Wiemann, Acting 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, an import, export, and international trade business, seeks to employ the beneficiary temporarily in the United States as its president and CEO. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel submits a brief.

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 United States petitioner was established in 1994 and states that it and its Russian affiliate, "12-BIS", are majority owned by the beneficiary. The petitioner seeks to employ the beneficiary for a three-year period at a weekly salary of \$1,000.

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 her decision, the director concludes that the record contains no in-depth description of the beneficiary's duties that establishes that the beneficiary will be primarily engaged in managing or directing the management of the U.S. entity.

On appeal, counsel argues that the beneficiary's position description, already provided by the petitioner, demonstrates that the beneficiary "has the authority and duty to develop the company's policy, she has the authority to make policy decisions and direct others to act on her business." The beneficiary's proposed duties are described as follows:

Develop business plan, objectives and strategies for 12-BIS and T-BIS and formulate company policy with goal of expanding sales, while maintaining financial stability and profitability. Determine future direction and

expansion of company; responsible for overall success of company in the international and U.S. markets;

Plan and develop financial strategies, budgets and objectives, including required investments and capital outlays;

Review activity reports of company and financial statements to determine profitability and direct objective and policy formation responsive to company needs;

Review and provide final approval of all contracts entered into by the U.S. company;

Direct management staff in development of procedures and implementation of company policy with goal of increasing sales and productivity; review and provide final approval of all procedures;

Evaluate, plan and develop strategy for increasing U.S. imports and exports in international markets and identifying prospective customers, products and suppliers for future business opportunities, in the U.S. and foreign markets.

Despite counsel's contentions, the evidence provided is deficient in demonstrating that the beneficiary will be employed in a primarily managerial or executive capacity. 8 C.F.R. 103.2(b)(12) states that an application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. 8 C.F.R. 214.2(l)(3)(v)(C) allows the United States operation one year within the date of approval of the petition to support an executive or managerial position. The record reflects that as of the filing date of the present petition on December 10, 1998, the U.S. entity had been established for more than four years, was well out of its start-up stage, and experiencing gross annual receipts/sales of \$3,772,097. The petitioner's federal income tax return for the period from October 1, 1997 through September 30, 1998, however, reflects no compensation of officers paid and only \$32,628 paid in salaries and wages.

The record does not reflect that the beneficiary will function at a senior level within an organizational hierarchy other than in position title. Despite the detailed description submitted by counsel of the beneficiary's proposed duties, there is no evidence to establish that the petitioner employs a subordinate staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing nonqualifying duties. The record

contains no comprehensive description of the beneficiary's duties that demonstrates that the beneficiary will be managing or directing the management of a department, subdivision, function, or component of the petitioning organization. For this 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.