



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



File: EAC 99 179 51476

Office: VERMONT SERVICE CENTER

Date: FEB 12 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:



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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

Bert P. Weimann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was summarily dismissed by the Associate Commissioner for Examinations because additional evidence had not been submitted within 30 days as claimed by counsel. The matter will be reopened on Service motion pursuant to 8 C.F.R. 103.5(a)(5)(i), as counsel had submitted a timely brief with additional documentation. The previous decision of the Associate Commissioner, dated May 12, 2000, will be withdrawn. The appeal will be dismissed.

The petitioner, a company that manufactures and exports Tibetan carpets, seeks to employ the beneficiary temporarily in the United States as its sales and marketing manager. 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 states that evidence was submitted to establish that the beneficiary will be employed in a qualifying L-1 capacity during the first year of operation and the company will evolve into a qualifying entity.

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.

8 C.F.R. 214.2(1)(3) states 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.

The United States petitioner was incorporated in 1996 and states that it is a branch of [REDACTED] located in [REDACTED]. The petitioner declares 233 employees and approximately \$900,000 in gross revenues. The petitioner seeks to employ the beneficiary at a salary of \$25,000 a year. At the time the

petition was filed, the beneficiary was in the United States as a B-1 nonimmigrant visitor for business. The petitioner seeks to change the beneficiary's status and classify him as an L-1A intracompany manager.

At 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
- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In a letter dated October 29, 1998, the petitioner described the beneficiary's duties abroad and in the proposed position in the United States as follows:

This is to certify that [the beneficiary] is working for my company as Sales and Marketing Manager and was also the manager of my old company [REDACTED]. Besides drawing a monthly salary of Rs. 25000.00 (Rupees Twenty Five Thousand only) he gets an addition (sic) 10% from the annual profit as a sales incentive. We have also opened a new company in his name [REDACTED] under which name we have already exported goods to Germany. In the light of his good work in Europe I have decided to send him to the USA to explore the market there and if possible open a branch or a showroom. He has the full authority to research and act accordingly. As a Sales and Marketing Manager, besides marketing, he changes, hire and fire employees and is consulted when making new decisions to improve production.

In response to the director's request for evidence regarding the managerial or executive duties of the beneficiary, the petitioner submitted a five year extension plan for the company and discussed the following:

Staffing:

[REDACTED] Inc. will initially hire one Assistant Manager during it's first year of operation at a weekly salary of \$450.00 per week. Several candidates are now being interviewed for the position of Assistant Manager, including possible candidate [REDACTED]. The President of the company and the Assistant Manager will be responsible for all operations.

The Assistant Manager will be responsible for daily operations such as opening and closing of store, stocking and inventory report of goods, displaying carpets for customers, sale of items, and general cleaning of store. The President of the company will be responsible for all other aspects of company operations. During the first

year of operations additional help will be sought in the area of marketing.

In his decision, the director determined that the petitioner failed to demonstrate that the beneficiary was employed in a managerial or executive capacity. The director noted that the beneficiary was not supervising any professional employees and would be likely to assist with the day-to-day non-managerial duties of the marketing department. The director concluded that the beneficiary would be employed as a first-line supervisor and not as a manager or executive.

On appeal, counsel states that:

The evidence in our case clearly shows that the beneficiary will perform managerial tasks only. Although this is a small company, the routine tasks as described by the business plan will be carried out by the Assistant Manager who will be responsible for daily operations such as "opening and closing of store, stocking and inventory, reports of good, displaying carpets for customers, sale of items, any general cleaning of store" (see page 1 of the Five Year Expansion Plan). The actual work will be performed by subcontractors who will be selected and monitored by the beneficiary (see page 2 of the plan).

The petition on behalf of the beneficiary should be approved because [the beneficiary] will perform sophisticated analysis, will determine which opportunities to pursue and then negotiate the deals. He will have complete discretion over the day-to-day activities of the company. He will also have a sole authority to negotiate sales contracts and will be responsible for developing new business ventures. Although the annual salary is not high, this by itself does not prevent that (sic) the beneficiary from performing managerial duties.

The petitioner's description of the job responsibilities is not sufficient to warrant a finding of managerial or executive job duties. The description of duties is vague and general in nature, essentially serving to paraphrase the regulatory definition of managerial and executive capacity. The record is not persuasive in demonstrating that the beneficiary's duties in the proposed position will be primarily managerial or executive in nature. Given the indefinite description of the beneficiary's job duties and the indiscriminate manner in which the petitioning company uses position titles, the petitioner has not established that the beneficiary is to be employed in a primarily managerial or executive position. The description of the duties to be performed by the beneficiary in the proposed position does not persuasively

demonstrate that the beneficiary will have managerial control and authority over a function, department, subdivision or component of the company. Further, the record does not sufficiently demonstrate that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing nonqualifying duties. The Service is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title. The petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity.

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.