



U.S. Department of Justice
Immigration and Naturalization Service

DN

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



File: SRC-00-089-51729

Office: Texas Service Center

Date: JAN 8 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)

Public Copy

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

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, an advertising agency, seeks to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary had been employed abroad in a primarily managerial or executive capacity.

On appeal, counsel submits a brief in rebuttal to the director's findings.

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.

Title 8 C.F.R. 214.2 (1)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

A) Sufficient physical premises to house the new office have been secured;

B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The United States entity, [REDACTED], was established in 2000 and states that it is an affiliate of the foreign petitioner located in Austria. The beneficiary claims to have been employed as the president of the foreign entity since 1990. The petitioner seeks to employ the beneficiary for a three-year period at an annual salary of \$30,000.

At issue in this proceeding is whether the beneficiary has been employed abroad 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 his decision, the director noted that in the foreign entity, the beneficiary supervises an assistant manager who cares for costumers and works with independent contractors.

On appeal, counsel states in part that:

Beneficiary has served the executive function of President of the Petitioner for almost 10 years. During that time, Beneficiary has been responsible for all executive functions...managing the functions of accounting, tax preparation and bookkeeping (performed by an outside company called [REDACTED] & [REDACTED] [no relation to Beneficiary] whose correspondence was included in the response for the Request for Additional Evidence) and sales and customer contacts (performed by [REDACTED] in [REDACTED] Austria). The majority of Beneficiary's time is spent in operational or policy management of Petitioner, along with some overall customer relations and contracting matters.

Through these executive functions and activities, Beneficiary directs and controls Petitioner to achieve its company goals. Contrary to the assumption stated in the Decision, the primary responsibility for coordinating the various activities and workers and independent contractors involved the production of the specific marketing pieces and services is the assistant manager, not the Beneficiary. However, in the context of the industry, the assistant manager's duties are professional and managerial in nature as well, and are not those of a "lower level" employee as is assumed in the Decision.

The products and services of Petitioner...require not only internal design, planning and project management work, but to a great extent, coordination and supervision of numerous outside contractors consisting of photographers, videographers, models, graphic designers, copywriters, website designers, etc. As is required in the industry, all of these functions require a high degree of professional education, achievement and/or technical training.

At the very least, Beneficiary's "supervisory" duties require supervision and management of professionals, project managers, professional accountants and bookkeepers, among others, which, in and of itself indicates Beneficiary's management capacity, in addition to his services in his executive capacity.

The assistant manager of Petitioner not only serves to represent the President when he is unavailable, but also serves as project and production manager which requires that she undertake the day to day and direct supervision of these professional production contractors (which could number in excess of 20 for a particular project and over 100 in a typical year). Beneficiary typically meets with the assistant manager several times a month, but usually does not get involved in the direct management of individual contractors or personnel.

The record indicates that the U.S. entity was incorporated on January 20, 2000, and the present petition was filed on February 4, 2000. The record further indicates that the beneficiary has been the owner and president of the foreign petitioner, an advertising agency, since 1990. Although the petitioner indicates that the foreign entity has two employees, the record contains no evidence such as payroll or tax records to document such claim nor have the salaries of the foreign entity's two employees been disclosed. Further, the record contains no evidence of payment made to outside employees such as photographers, videographers, models, graphic designers, copywriters, and website designers who are mentioned above. Although counsel indicates above that the beneficiary supervises professionals such as an outside accountant, it would seem reasonable that an outside public accountant would not require "supervision" from his clients to prepare tax returns. It is also noted that many of the documents pertaining to the foreign entity have not been translated nor has their financial data been converted to U.S. currency rates. It is incumbent upon the petitioner to provide detailed and comprehensive evidence of the beneficiary's foreign employment to establish that he has been and will be acting in a managerial or executive capacity.

Upon review of the record, the petitioner has not sufficiently established that the beneficiary functioned in the foreign entity at a senior level within an organizational hierarchy other than in position title. There is no comprehensive description of the beneficiary's duties that persuasively demonstrates that the beneficiary has been performing in a primarily managerial or executive capacity. There is no evidence to establish that the petitioner employs a subordinate staff of professional, managerial, or supervisory personnel who relieve the beneficiary from performing nonqualifying duties. The record contains no comprehensive description of the beneficiary's duties that demonstrates that the beneficiary has been 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.

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the beneficiary will be employed in the U.S. entity in a primarily managerial or executive capacity, or that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. Nor does the record demonstrate that sufficient physical premises to house the new office have been secured. It is noted that the lease for the U.S. entity contains the signature of the beneficiary's spouse as the "lessor" and the beneficiary's signature as the "lessee." As this matter will be dismissed on the grounds discussed, these issues need not be examined further.

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.