

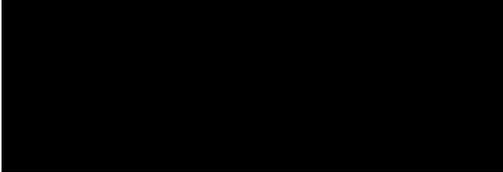


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U.S. Department of Justice

Immigration and Naturalization Service

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



File: EAC 99 268 51585 Office: Vermont Service Center Date:

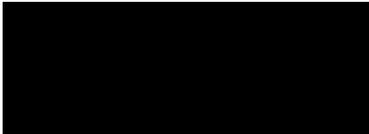
MAR 12 2001

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:



Public Copy

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.

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FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

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

The petitioner, an importer and exporter of clothing and yarns, seeks authorization to employ the beneficiary temporarily in the United States as marketing director of its new office. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity, or that it had sufficient physical premises to conduct a business.

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), 8U.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)(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 U.S. petitioner states that it was established in 1999 and that it is a subsidiary of [REDACTED] and Partners, located in Amman, Jordan. The petitioner seeks authorization to employ the beneficiary for one year at an annual salary of \$45,000.

The first issue in this proceeding is whether the petitioner has secured sufficient physical premises to house its office.

The petitioner initially submitted no lease for office space. On appeal, the petitioner submitted a lease for office space at 235 [REDACTED]. It appears that the petitioner has obtained sufficient physical premises to house its office. Therefore, the petitioner has overcome this portion of the director's denial.

The other issue in this proceeding is whether the beneficiary has been and 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.

The petitioner describes the beneficiary's proposed duties with the U.S. entity the "same" as those described in the description of the alien's duties with the foreign entity for the past three years.

The petitioner described the beneficiary's duties with the foreign entity as "overall marketing, budgeting and executive policy making of company."

In response to a request for additional evidence that the beneficiary had been and would be primarily employed in a managerial or executive capacity, the petitioner submitted position descriptions for the U.S. entity as follows:

President - to perform executive functions including the following; direct management of organization, establish goals, policies and sets standards, exercises wide latitude in discretionary decision making. More specifically, he will plan, develop, and establish policies and objectives of our organization in accordance with board directives (5 hours). Confer with company officers who plan business objectives, develops

organizational policies to coordinate functions and operations between divisions and departments, establishes responsibilities and procedures for attaining company objectives (11 hours). Review activity reports and financial statements to determine progress and status in attaining objectives and revises objectives and plan in accordance with current conditions (8 hours). Rate performance of executives including the Vice President, General Manager, and Vice President - Assist President in all of his executive functions. Aid the President in formulating and administering organization policies, participates in developing long range goals and objectives. Reviews analyses of activities, costs, operations, and forecast data to determine department progress toward stated goals and objectives. Confers with President and other administrative personnel to review achievements and discuss required changes in goals and objectives. The Vice President to perform duties of President in absence of president. proposed Salary-\$48,000.00/yr.

Marketing Director - In charge of Marketing and Sales Policy and strategy. Prepare and administer budget with aid of Vice President and General Manager. Unlimited discretionary day to day decision making in the marketing and sales department. Overall marketing management of the sales staff to ensure that they comply with company policy and strategy. Has authority to hire and fire and recommend personnel actions in the marketing department. Supervises and controls the work of others including the marketing manager, sales staff and market research analyst. Travel abroad for negotiation and execution of contracts for purchasing of merchandise.

General Manager - Manage operations of company, discretionary decision making, hire, train and fire employees. Deal with banks and other institutions for credit. Supervise workers engaged in day to day operations. Proposed salary -\$38,000.00/yr.

Market Research Analyst - Analyze market conditions for here and abroad for sale of company merchandise. Proposed salary-\$35,000.00/yr.

Sales Persons (2) - Selling and trading merchandise on behalf of company. Proposed salary-\$30,000.00/yr.

Import Export Clerk - Performs the handling of the merchandise shipped in and shipped out. Proposed Salary-\$20,000.00/yr.

Secretary - Performs administrative functions of company. proposed Salary \$18,000.00/yr.

The director noted in his decision that, other than providing a general limiting of the foreign entity's employees and position titles, the petitioner offered no conclusive documentary evidence of the beneficiary's position or duties overseas. The director further noted that, while the petition lists the beneficiary as the marketing director, a letter from a certified public accountant, submitted with the petition, lists the beneficiary as President and sole shareholder of the U.S. entity.

On appeal, counsel offers the following description of the beneficiary's proposed executive level duties:

- a) Direct the Sales, Marketing, Advertising and Personnel Management of the organization in achieving targeted sales as determined by executive committee of which the marketing director is a member.
- b) Establish goals and policies for Sales and Advertising component of organization.
- c) Exercises wide latitude in discretionary decision making.
- d) Direct and Supervise the Research of markets in USA, Europe and Asia for sale of merchandise, are sales performance and market intelligence reports.
- e) Direct and Supervise the planning and overseeing of the budgeting and Finance for advertising campaigns made by advertising department.
- f) Negotiation and execution of contracts.

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 described as preparing and administering the budget, discretionary decision making in the marketing and sales departments, hiring and firing personnel, and negotiating and executing contracts, are without any context in which to reach a determination as to whether they would be qualifying. Other duties such as traveling abroad for negotiation and execution of contracts for purchasing of merchandise, and establishing goals and policies for sales and advertising components, have not been demonstrated to be managerial or executive in nature. The use of the position title of "marketing director" is not sufficient.

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

Further, the petitioner's evidence is not sufficient in establishing that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing nonqualifying duties. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

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.