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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 00 011 50763

Office: Vermont Service Center

Date: MAR 12 2001

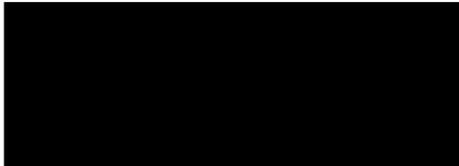
IN RE: Petitioner:
Beneficiary:



Public Copy

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:



Identification 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, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decisions of the director and the Associate Commissioner will be withdrawn and the petition will be approved.

The petitioner, a company engaged in the import and sale of diamonds and jewelry, seeks to employ the beneficiary temporarily in the United States as the manager of its New York office. 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 argued that the "rationale for the dismissal is unreasonable." Counsel further argues that the beneficiary would be employed in a primarily managerial or executive capacity, and that the petition should be approved.

The Associate Commissioner dismissed the appeal reasoning that the Service's finding was based on the petitioner's own statements, and that, based on the evidence presented, the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On motion, counsel states in part that:

It is apparent from the decision that the Office of Administrative Appeals was considering an incomplete record. The decision indicates that the beneficiary would be the only employee of the organization, when it was clearly set out in the evidence submitted to the Regional Service Center that the beneficiary would be managing a staff of five people, including two subordinate managers, an administration manager and a sales coordinator.

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 1930 and states that it is an affiliate of M/S C. Mahendra Exports, located in India. The petitioner seeks to employ the beneficiary for a two-year period at an annual salary of \$35,000.

At issue in this proceeding is whether the beneficiary has been employed abroad and will be employed in the United States 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 dated August 16, 2000, the Associate Commissioner described, at length, the beneficiary's duties with the petitioning company. Those descriptions of duties will not be restated in this proceeding.

On motion, counsel contends that the Administrative Appeals Office ignored the more substantive description of the beneficiary's duties and cited an abbreviated one in the decision. Counsel submits a letter from the petitioner's administration manager, dated November 10, 1999, which describes the job duties for each of the U.S. entity's employees as follows:

██████████ - Will direct the operations of an enterprise importing, wholesaling and distributing diamonds manufactured in India. Mr. Shah completed two years of university where he studied commerce, and has three years experience in marketing and sales management. He has been chosen to head the New York office because of his knowledge of our international operations particularly our sources, costs and manufacturing capabilities in India, which are crucial in making decisions regarding our sales and marketing strategy in the U.S.A. He will be analyzing the U.S. diamond market and making decisions as to what qualities and sizes of stones to market based on his judgement as to the strength of demand and the cost and availability of such goods. He will, in coordination with the manufacturing managers in India, plan and determine the production schedules to achieve the best mix of products to make available and to fulfill major orders and supply contracts. He will use his training and experience to determine potential profit margins, as well as potential sales volume. Both I as administration manager and Mr. Raymond Thomas our sales coordinator will report to Mr. Shah, and we both hold college degrees and have many years of experience in management. With our assistance and the assistance of managerial staff in India, Mr. Shah will determine and direct the implementation of import sales and distribution systems coordinated with the manufacturing and supply system in India. To achieve this, he will not only review and provide general direction to the work of the administrative manager and sales coordinator, he will retain and review the

performance of attorneys, accountants and customs house brokers. All of Mr. [REDACTED] working hours will be devoted to the analysis of our business (which involves meeting with major customers as well as reviewing our own records and the state and trend of the diamond market in the U.S.A.), the development of systems and strategies to increase sales and improve profitability, and the direction of our international export/import sales and distribution activities. Mr. [REDACTED] will typically devote at least four hours per day to telephone and live conferences with his managerial team, banks and factors, major customers and brokers, professional service providers and the managerial team in India. He will devote at least three hours per day to reviewing information available with respect to our own business (accounts, outstanding orders, sales contracts and contracts for services, finances), and with respect to general market conditions (costs of rough and finished stones of particular sizes and qualities, interest rates, availability of credit, insurance and shipping rates) in order to spend another one to two hours in planning business strategy and implementing that strategy by making decisions as to what goods to market at what prices and under what terms and conditions.

I, [REDACTED] as administration manager, will be responsible for the actual arrangements and the monitoring of shipments and deliveries, for insurance claims, for advising our customs brokers of expected shipments from abroad and providing them with the documents required, for overseeing the maintenance of our books of account and inventory records.

[REDACTED] our secretary, and [REDACTED] our bookkeeper report to me. [REDACTED] holds a degree in Business Administration. As a bookkeeper she prepares and updates our financial records and handles bank deposits and verifies bank statements. As our secretary, Ms. [REDACTED] types letters and invoices, answers the telephone, files records and updates computer records and performs general clerical functions in the office.

[REDACTED] as sales representative/sales coordinator, not only meets with customers and presents our products, he also coordinates the sales efforts and maintains contacts with independent brokers and other wholesalers to whom we may consign goods. He also is responsible for monitoring the fulfillment of orders to our customers and dealing with any problems customers may have with delivery schedules or the goods received.

[REDACTED] a diamond sorter who inspects and selects stones from inventory and from shipments received to assemble lots to be offered for sale or to fill orders, reports to Mr. Thomas.

In review, the additional information presented on motion is sufficient in overcoming the objections of the director and the Associate Commissioner. The petitioner has provided a comprehensive description of the beneficiary's daily duties to establish that he will work in a managerial capacity.

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 been met.

ORDER: The order of August 16, 2000 dismissing the appeal is withdrawn. The petition is approved.