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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



File: EAC 00 176 50614 Office: Vermont Service Center Date:

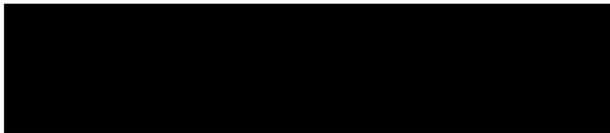
IN RE: Petitioner:
Beneficiary:



MAR 12 2001

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy.

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

The petitioner is an auto parts company. It seeks to employ the beneficiary temporarily in the United States as president of its new office. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity, or that the United States operation, within one year, would support a managerial or executive position.

On appeal, counsel argues that the decision was "wholly arbitrary and did not take into account the great weight of the evidence which establishes that the beneficiary qualifies for an L-1 classification."

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.

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 company was established in 2000 and states that it is a wholly owned subsidiary of Machine Ind. Co. Ltd., located in Tehran, Iran. The petitioner seeks to employ the beneficiary for two years at a monthly salary of \$3,000.

In his decision, the director concluded that the U.S. company could not support a managerial or executive position within one year of its operation because of the nature of its business and the size of the company. The director further concluded that the petitioner had not established that the beneficiary's day to day activities would be primarily managerial or executive in nature.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in the proposed position in the United States in a primarily managerial or executive capacity, and whether the United States operation would support such a position within one year.

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 record contains a description of the beneficiary's duties in the proposed position in the United States as follows:

President in charge of set up of company. Responsible for initial growth of company and client base. Determines major decision making and hiring of employees.

In response to a request for additional evidence dated June 13, 2000, the petitioner described the beneficiary's duties with the U.S. entity as follows:

First, the Applicant is slated to be the President of [REDACTED] Ltd (hereinafter referred to as PM II). As the President, he would oversee and develop the company's marketing and sales efforts in expanding on the business and sales opportunities in the United States.

Second, he would control and oversee the work of other professional and managerial employees such as the general manager and supervisor. He will have the ability to exercise discretion over the day to day activities of the

company's business operations, including but not limited to, formulating administrative and operational policies and procedures, reviewing and analyzing company expenditures, and overseeing financial and operational reports.

Thirdly, at no point would any of his duties be that of a first-line supervisor. Only executive management personnel, such as the Applicant, would have duties and responsibilities of recommending capital expenditures for acquisitions of product lines, evaluating systems, procedures and policies of company activities, and enforcing compliance with policies and governmental or nautical regulations related to exports and imports.

Finally, the applicant, by virtue of his managerial capacity, would have authority to hire and fire personnel, direct senior level employees within the organization with their duties and recommend or authorize changes in employee functions.

On appeal, counsel, to establish the beneficiary's managerial and executive responsibilities with the U.S. company, restates the above description of the beneficiary's duties. Counsel argues that:

He will direct the set up of a new company - including major decision making, development of client base and purchases of items exported from abroad.

Establishing the goals and policies of PMI II Autoparts would be one of the prime duties of the Applicant. He will develop recommendations for company expansion and identify potential new projects for investment opportunities.

As President, [the beneficiary] will have wide latitude and discretion in exercising his decision making. He has broad powers to make decisions as he deems necessary for the best interests of the company.

As a result of his broad powers, [the beneficiary] would not need any direction from other high level executives from the parent company. His decision making is based on company objectives and his own business acumen from the years spent as an executive and manager. Moreover, his broad knowledge of the worldwide auto parts industry compliments his specialized knowledge and business skills.

The above description of the beneficiary's duties is in part a paraphrasing of the statutory definitions of managerial and executive capacity. It is not a comprehensive description of the beneficiary's actual daily duties. On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary will be employed in a primarily managerial or executive capacity. The fact that an individual has a managerial or executive title does not necessarily establish eligibility for classification in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. The record does not establish that a majority of the beneficiary's duties will be managing the organization, or a department, subdivision, function, or component of the petitioner's organization. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing non-qualifying duties. Ultimately, the petitioner has not established that the beneficiary will be employed in a primarily executive or managerial position. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not provided sufficient evidence to demonstrate that the beneficiary's employment in the United States will be temporary. Matter of Isovich, 18 I&N Dec. 361 (Comm. 1980); 8 C.F.R. 214.2(1)(3)(vii). As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

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.