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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



APR 30 2002

File: EAC-99-210-51310

Office: Vermont Service Center

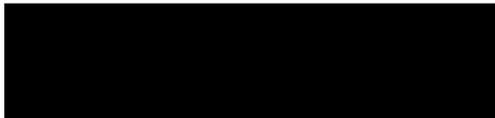
Date:

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.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** This is a motion to reopen the Associate Commissioner for Examination's decision dismissing the appeal of the denial of the nonimmigrant visa petition. The motion to reopen will be granted and the previous decisions of the director and the Associate Commissioner will be affirmed.

The petitioner is engaged in the design of clothing and fabric. The petition indicates that the beneficiary was admitted to the United States as an L-1 intracompany transferee from September 8, 1993 until September 3, 1999. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president for one year. The director determined that the petitioner had not established that the beneficiary would be employed primarily in a managerial or executive capacity. The director's decision was affirmed by the Associate Commissioner for Examinations on appeal.

The Associate Commissioner, beyond the decision of the director, found that the record contained insufficient evidence to demonstrate that the petitioner is doing business, or that a qualifying relationship exists between the United States and foreign entities.

On motion, counsel states that the 50% ownership of "Angelique Imports, Inc." by the petitioning entity and the executive and managerial duties of the beneficiary justify the extension of the L-1. Counsel also states that "additional evidence will be provided, as received, within the coming sixty (60) days." To date, no additional evidence has been received. Therefore, the record must be considered complete.

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 issue in this proceeding is whether the beneficiary will continue to be employed in the United States primarily in a 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 petition indicates that the United States petitioning entity was established on June 23, 1993. The petitioning entity's 1995

U.S. Corporation Income Tax Return indicates that it was incorporated on April 10, 1995. The petition indicates that the petitioning entity is a wholly-owned subsidiary of First In Fashion Exports Private Limited, located in India. The petitioner seeks to continue to employ the beneficiary for one year at an annual salary of \$40,000.

In the present motion, the petitioner has not provided any information, or evidence in rebuttal to the Associate Commissioner's affirmation of the director's findings. Further, the additional issues raised by the Associate Commissioner in his decision were not addressed by the petitioner. Since the petitioner did not submit any additional information or evidence to overcome the Associate Commissioner's decision, the petition may not be approved.

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 Associate Commissioner's decision of August 21, 2000 will be affirmed.