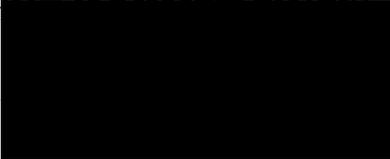


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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

File: EAC-01-235-55415 Office: Vermont Service Center Date:

APR 11 2003

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)

ON BEHALF OF PETITIONER:



PUBLIC COPY

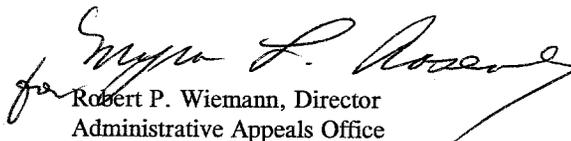
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an import/export company. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its import/export executive. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel argues that the INS was arbitrary in its denial of the petition.

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 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.

Regulations at 8 C.F.R. § 214.2(1)(3) state that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

Regulations at 8 C.F.R. § 214.2(1)(14)(ii) state that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (1)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The U.S. petitioner states that it was established in 1997 and that it is 90 percent owned subsidiary of [REDACTED] located in New Delhi, India. On the petition, the petitioner declares four (4) employees and \$599,853.00 in gross income. The initial petition was approved and was valid from August 27, 1999 to August 26, 2001. The petitioner seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of \$30,000.

At issue in this proceeding is whether the beneficiary 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 initially described the beneficiary's duties, in pertinent part, as follows:

[The beneficiary's] responsibilities as the Executive-Import & Exports, since joining us in February 1999 in L-1 status include: development of product lines; overseeing the establishment of technical details; styling and quality control requirements; identification of manufacturing facilities and setting production standards; processing orders of buyers; planning product catalogues and their distribution among potential customers; participation in trade shows and follow up trade inquiries; processing export inquiries; identifying sources for various industrial and consumer goods for export from the United States, and in general, the enhancement of the company's international business.

While [the beneficiary] continues to perform the above job duties, his responsibilities have in fact, increased substantially during the past twelve months. Besides [the beneficiary's] position of Executive-Imports & Exports, we have a second position of an Executive-marketing & Finance. Both the L-1 positions were approved simultaneously and operated in tandem complementing each other. However, the incumbent of the second position left the company and consequently, [the beneficiary] had to assume the responsibilities of the second executive also. These are: development of a distribution network; interface with distributors in terms of styling, specifications, finishes, workmanship, etc. in regard to company's product range; making presentations at buyer's office and negotiating quantities, prices and terms; quality controls; review market trends and keep parent company advised of significant developments which may impact business, such as import quota restrictions, bilateral trade and compliance with WTO regulations.

In addition, [the beneficiary] is now required to handle cash management, negotiate lines of credit with banks when necessary, review and draw up sales agreements, sales and inventory financing etc. Solely as a result of his efforts, there has been a substantial growth in the sales of the existing line of leather goods. This has been achieved by his extensive travel, participation in trade shows (Exhibit 5), effecting improvements in product styles to conform to market trends, coordinating inventories with production by the parent company, ensuring timely deliveries and keeping potential buyers informed of company's latest products.

WHY WE SEEK AN EXTENSION OF STAY FOR THE BENEFICIARY

Since his transfer to the American subsidiary, [the beneficiary] has succeeded in providing a great impetus to our marketing efforts, by virtue of his long experience and thorough knowledge of the company's products and their markets.

Towards the end of the year 2000, [the beneficiary] devised two brand names for the Petitioner's products and started test marketing them (Exhibit-10). Also, during the year, he traveled extensively in India for 6 weeks to explore the possibilities of introducing a new line of minerals, gems and rough stone rocks. He also was able to achieve a turnover of \$125,000 during the first 8 months of starting the new line without straining the resources of the Petitioner. He has

presently in hand confirmed orders worth approximately \$100,000 to be executed through the rest of the current year.

CURRENT STAFFING OF U.S. SUBSIDIARY

The downturn of the U.S. economy has also resulted in putting on hold temporarily our plans to increase our staff. We have currently a President, a Vice President, an Executive-Import & Export (the beneficiary), an Import Assistant and a Book Keeper [sic].

In a Notice of Action dated July 31, 2001, the petitioner was requested to submit additional evidence to establish the beneficiary's eligibility for the benefits sought. In response, the petitioner submitted a letter in which the beneficiary's duties were described, in pertinent part, as follows:

[The] beneficiary has launched an aggressive plan to increase sales and profitability of the company in the coming months. Attending as many trade shows as possible is part of the strategy which helps in inducting new products as well as keeping the flow of existing products.

[The] beneficiary is not involved in the day-to-day selling of the company's products. Rather, [the] beneficiary's involvement in processing buyers' orders is required only in case of orders for customized products, where specifications differ from our regular products and require certain technical expertise in terms of selection of leather and accessories. These specifications have to be met keeping in mind the resources and production facilities of our parent company in India.

The petitioner submitted a document entitled **ORGANIZATIONAL STRUCTURE AS OF DECEMBER 31, 2001**. This document indicated that the petitioner had seven employees and a contractor. The identified positions were President, Vice-President, Executive-Import, Marketing & Finance, Assistant Manager-Imports, Assistant Manager-Marketing, Manager- Inventory & Shipping, Book Keeper and a contracted Shipping & Handling Company.

In his position as Executive-Import, Marketing & Finance, the beneficiary has the following responsibilities:

- Formalize strategies to promote company's products.

- Finalization of styles, quality and supply sources including negotiation of imports.
- Development of trade with foreign companies.
- Supervision of accounts and receivables.
- Negotiate and establish distribution network.
- Development of new trade lines.
- Processing of custom orders and follow-up of production with various sources.
- Participation in trade shows whenever required.
- Presentations at the buyer's office and negotiations regarding styling, quality and terms.
- Review market trends and advise the management of significant developments.
- Cash management.
- Sales management and inventory financing.
- Conceive, plan and finalize details of the product catalogues.

The director found that the petitioner had failed to establish that the beneficiary would be employed in a primarily executive or managerial capacity.

On appeal, counsel indicates that the director ignored the documentation submitted in response to the Notice of Action and resubmits basically the same evidence. Counsel adds, in pertinent part, that:

[The] beneficiary is now required to handle cash management, negotiate lines of credit with banks when necessary, review and draw up sales agreements, inventory, financing etc [sic].

As widely accepted, the American economy is presently going through a down-turn. The leather products trade is one of the worst affected. [The] beneficiary needs another 2 years to overcome the present difficulties. In the meantime, he has resisted pressures to downsize the staff which would have added to the existing unemployment situation in the United States.

[The] beneficiary has succeeded in establishing the new subsidiary office on a second footing and making the Petitioning entity a successful, viable growing company. During the corporate year 10/1/99 to 9/30/2000, [the] Petitioner has [sic] gross sales of \$599,853 and total assets of \$217,319. Documents in this regard were submitted with [the] I-129L petition. In spite of the general downturn in the economy and the sharp fall in consumer spending, the petitioner's gross sales and total assets in the year October 2000 to September 2001 have remained at about the same level as the previous year.

Counsel further adds that the beneficiary essentially meets almost all the requirements of "managerial capacity," as well as, "executive capacity as defined under Section 101(a)(44)(A)&(B) of the Immigration & Nationality Act in that:

1. he directs the management of the organization,
2. he manages an essential function within the organization,
3. he has the authority to hire and fire employees supervised by him,
4. he exercises discretion over the day-to-day operations of the company,
5. he establishes the goals and policies of the organization,
6. he exercises wide latitude in discretionary decision-making,
7. he receives only general supervision or direction from the parent company.

The information provided describes the beneficiary's duties in broad, general and conflicting terms. There is insufficient detail regarding the actual duties of the assignment, the percentage of time devoted to individual duties, and the nature of the business activity of the organization in order to overcome the objections of the director. Duties such as formalizing strategies to promote company's products, finalizing styles, quality and supply sources, developing trade with foreign companies, negotiating and establishing distribution networks, developing new trade lines, processing custom orders and follow-up of production with various sources, and participation in trade shows, are without any context in which to reach a determination as to whether they would be

qualifying. The use of the position title of "Executive-Import & Export" is not persuasive.

The record contains insufficient evidence to demonstrate that the beneficiary has been or will be employed in a 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. Further, the petitioner's evidence is not persuasive 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. Although the petitioner claims to have seven employees it has failed to provide comprehensive descriptions of the duties of these employees. Rather, the brief descriptions provided regarding the seven employees, indicate that five of the purported seven employees work only 20 hour weeks. On appeal, counsel states that the beneficiary directs the management of the organization. However, counsel provides no elaboration on what functions the president and vice-president of the petitioning entity perform. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed in a primarily qualifying 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.