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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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Washington, D.C. 20536



APR 18 2003

File: WAC 01 191 55350 Office: CALIFORNIA 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)

ON 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 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, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an importing and exporting operation. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. 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.

On appeal, counsel asserts that the Bureau erred in its denial of the petition and submits a brief and additional evidence in support of such claim.

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.

8 C.F.R. § 214.2(1)(3) states 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.

8 C.F.R. § 214.2(1)(14)(ii) states 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 March of 2000 and that it is a wholly-owned subsidiary of Bio-Medic Private Ltd., located in Chandigarh, India. The petitioner declares one employee and \$139,671 in gross revenues. The initial petition was approved and was valid until May 15, 2001, in order to open the new office. The petitioner seeks to extend the petition's validity and the beneficiary's stay for three years at an annual salary of \$48,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be employed 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 contains the following description of the beneficiary's proposed job duties in the United States:

Creating international markets, locating high tech products from US manufacturers for the parent corporation to add to its product line and attending US based scientific events and exhibitions to coll[ect] information on the latest industry developments.

In a separate supporting statement, the petitioner claims that the beneficiary's duties have included "efficiently organizing periodic shipments to the parent company . . . , offering direct shipment to several customers . . . ."

On June 19, 2001, the director sent the petitioner a notice requesting additional evidence. Namely, the director instructed the petitioner to submit the U.S. entity's organization chart, a list of employees supervised by the beneficiary, as well as their job titles and the duties performed, and a detailed description of the beneficiary's job duties, including the percentage of time

spent performing each of the listed duties.

In response to the above, the petitioner submitted an organization chart and a list of its employees. However, both documents are comprised, in large portion, of individuals who are employed in India by the petitioner's parent organization. As the request for additional evidence directly pertains to the petitioning organization, only those individuals employed by the U.S. subsidiary will be considered at this time. The petitioner's list of employees contains only one U.S.-based employee. That employee fills the position of office assistant. Although the list of employees indicates the petitioner's intent to hire an international sales manager, at the time of the petitioner's response to the request for additional evidence, that position remained vacant. The petitioner's organization chart shows the beneficiary at the top of the organizational hierarchy. The chart also indicates that he directly supervises the company's certified public accountant, the office assistant, a warehousing operation which handles the petitioner's packing and shipping, and a handful of the petitioner's vendors. It is noted that while the petitioner may have a business relationship with vendors who provide the merchandise to be sold to the petitioner's clients, vendors cannot be considered employees of the petitioner.

Lastly, the petitioner provided the Bureau with the following description of the beneficiary's job duties:

- Prompt procurement of products as per the purchase orders received by Labware-USA.
- Scheduling for early supply date for items on back order with the respective supplier.
- Arrangement for Labeling and export packaging as per the demand/requirement of customer.
- Negotiation for special pricing for individual item/purchase order based on competition, packing/quantity requirement from the customer to make Labware competitive in India and International markets.
- Personal Meetings with top executives of suppliers to discuss on current sales trends and individual market requirements. Strategies to suit individual markets are planned to boost sales of products from U.S., manufacturers in the expanding BIOTECH markets of India.
- To discuss and understand the advantages of newer products and developments made by current suppliers to Labware/Imperial.
- Prompt settlement of complaints from un-satisfied

customers and understanding the main cause of such complaints. Thus creating goodwill in market by providing efficient customer support and after sale services.

- Prompt submission of technical queries as received from customers, parent company or international distributors for highly technical products such as products from Stratagene.

The director denied the petitioner, concluding that the petitioner lacks "a reasonable supporting staff" who would allow the beneficiary to focus on primarily managerial or executive duties.

On appeal, counsel submits a lengthy brief in which he asserts that the petitioner hired a sales and operations manager, in addition to the office assistant, to relieve the beneficiary from having to perform nonqualifying duties. However, 8 C.F.R. § 103.2(b)(12) states, in pertinent part that "an application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." In the instant case, counsel states that the sales and operations manager was hired on October 1, 2001 and, based on the petition which indicates that the petitioner had only one employee as of the date of filing, it is clear that the office assistant was also hired after the petition was filed. Therefore, at the time the petition was filed, the petitioner employed only the beneficiary who, based on various emails and other correspondence submitted in support of the petition, was entirely responsible for the sales aspect of the petitioner's operation, as well as other non-qualifying office duties.

Counsel further submits letters from companies who handle the petitioner's shipping, indicating that the beneficiary "works with senior management level professionals . . . to formulate and implement policies on matters related to shipping . . . ." However, in determining whether a job position would be primarily managerial or executive, the Bureau must look closely at the actual day-to-day duties to be performed by the individual. The overall size and scope of the business operation is also considered. When a company has very few workers it becomes questionable as to whether the operator of the business will be engaged primarily in managerial or executive duties. In the instant case, the fact remains that at the time the petition was filed, the beneficiary was not limited to merely managing and directing the main functions of the petitioning organization; rather the record is clear that the beneficiary was also performing those functions, primarily functions related to sales and customer service. As previously established, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church*

*Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The fact that an individual manages a small business does not necessarily establish eligibility for classification as an intracompany transferee 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 have been primarily directing the management of the organization. The record indicates that a preponderance of the beneficiary's duties have been directly providing the services of the business. While the Bureau recognizes the petitioner's relatively short term of existence, the fact remains that 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in Bureau regulations that allows for an extension of this one-year period. 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 nonqualifying duties. The petitioner has not demonstrated that it has reached or will reach a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a 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.