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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536



AUG 06 2003

File: EAC 99 030 53601 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)

ON BEHALF OF PETITIONER:



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
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO will be affirmed.

The petitioner is a used automobile dealer which seeks to employ the beneficiary temporarily in the United States as its financial manager. 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 stated that the beneficiary had submitted sufficient documentary evidence to establish that he is and has been employed in a primarily managerial or executive capacity.

The AAO dismissed the appeal finding that the evidence submitted did not demonstrate that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On motion, counsel argues that the previously submitted detailed descriptions of the beneficiary's intended employment, as well as the evidence submitted with this motion, clearly establishes the beneficiary's qualifications to be employed in the United States in either a managerial or executive capacity. Counsel submits a corporate chart of the petitioning firm dated March 24, 2002, resumes and identification documents of the current employees of the United States firm and the 2002 and 2001 Corporate Tax Returns for Eclavs, Inc., the corporation under which Gregg's Fine Autos operates. Counsel also submits corporate development charts for the United States corporation and licenses and certificates for the firm and its employees as well as advertisements and brochures for Gregg's Fine Autos.

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.

The 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.

The United States petitioner was incorporated in 1996 in Pennsylvania. The foreign entity was founded in 1991 in the former Soviet Union.

The issue to be addressed this proceeding is whether the petitioner has established that the beneficiary had been employed abroad or would 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:

The term "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:

The term "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

iii. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner initially submitted a vague and general description of the beneficiary's duties. The petitioner's description of the beneficiary's duties indicated that the beneficiary was performing operational rather than managerial or executive duties. 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 of Scientology International*, 19 I&N Dec. 593 (BIA 1988). The record does not support a finding that the beneficiary worked for one continuous year within the three years preceding the filing date of this petition in a primarily managerial or executive capacity. No further evidence that would overcome this determination was forwarded on motion.

In addition, the evidence submitted is insufficient to establish that the beneficiary will be acting in a managerial or executive capacity at the petitioning firm in the United States. The petitioner's 2000 and 2001 federal income tax returns submitted on motion do not support the petitioner's assertion that the United States corporation has reached the stage of organizational development or that the corporation conducts business that is of such complexity that it can realistically be concluded that the beneficiary would be primarily engaged in performing executive or managerial functions as the company's financial manager. For example, for the entire year of 2000, the firm only paid \$24,700 in salaries and wages and no compensation to its officers. Finally, it is noted that the petitioner must establish the beneficiary's eligibility for this classification at the time the petition was filed, on November 2, 1998. Therefore, the information from the 2000 and 2001 federal tax returns, although similar to the 1999 return, does not impact the outcome of this decision. Consequently, the petitioner has not demonstrated that the beneficiary will be employed in the United States in a primarily managerial or executive position.

For the above reasons, 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 decision of the AAO dated February 25, 2002 is affirmed.