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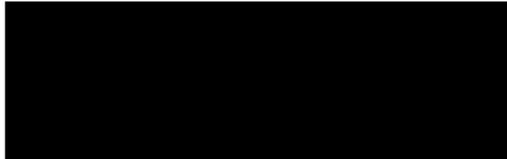
U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

D7

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



File: LIN 02 098 55228

Office: NEBRASKA SERVICE CENTER

Date:

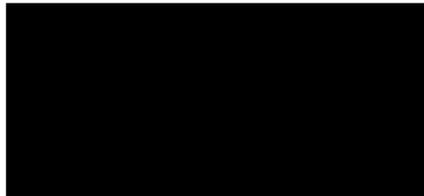
AUG 06 2003

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:



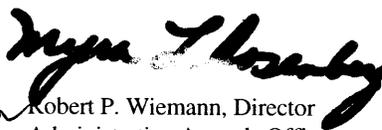
INSTRUCTIONS:

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.

for 
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is primarily engaged in providing web-enabled software systems and services to its customers. It seeks to extend its employment of the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, the petitioner states that the director erred in adjudicating this petition. The petitioner resubmits a position description for the offered position in an expanded format and further evidence to support the fact that the firm provides a continuous and systematic provision of goods and services. The petitioner also submits evidence of the beneficiary's executive status while employed by Internova MCI Pty. Limited, the parent company in Australia.

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 issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will 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.

Upon initial submission, the petitioner described the beneficiary's proposed job duties as president as follows:

Establishing, maintaining, and growing a base of operations in the United States and globally. Engaging, supervising and managing all senior managers for the Company, including sales, marketing, production, administration and finance personnel; Determining growth and expansion strategies for the European market; Establishing alliance partners; Developing distributors and franchise centers; Managing and controlling sales, marketing, administration, and finance directors; Ensuring that all employees share a corporate vision and achieve Company goals; Supervising all Company managers and executives; sitting on the company's Board of Directors; Exercising ultimate

discretion over business direction, strategy, decision-making, operational activities and employees.

On appeal, the petitioner's argument relies, in part, on a federal district case involving an immigrant petition, *Mars Jewelers, Inc. v. INS.*, 702 F. Supp. 1570 (N.D. Ga. 1988). A federal district court case has no binding precedential value in the instant case. *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Moreover, the statute has since been amended and sets forth explicit definitions of managerial and executive capacity on which the director relied.

The petitioner states that Mr. Wilson, one of the firm's four employees, holds a bachelor of science degree while Mr. Nielsen, who works for the firm as an independent contractor holds a bachelor's degree in accounting and a master's degree in public administration. The petitioner indicates that these two persons are engaged under a formal executive employment agreement with the corporation and report directly to the beneficiary who exercised discretionary authority over all matters relating to these personnel. The petitioner also indicates that the 2001 business year was an exceptionally difficult year to initiate a new technology based business venture in the United States and submits a business plan which outlines the firm's goals and intentions concerning the size of the business enterprise that will be created.

The petitioning entity was incorporated on December 11, 2000. On January 30, 2002, the date the visa petition was filed, the petitioning corporation had a staff of four persons including the beneficiary as president and CEO. Mr. Wilson is listed as serving as vice president, product development and customer services while Mr. Nielsoen serves as vice president, product development and customer service. The other employee listed in the payroll records is J. Armfield. The petitioner's U.S. Corporation Income Tax Return for 2001 shows that the firm had gross receipts or sales of \$34,027 and total income of \$30,982. The firm paid only \$39,803 in salary and wages for the entire year and showed no net income for the period.

The petitioner's assertions concerning the managerial and executive nature of the beneficiary's future duties are not persuasive. The petitioner's descriptions of the beneficiary's proposed job duties are not sufficient to warrant a finding of managerial or executive duties.

It appears that the beneficiary would be performing the necessary operations of the petitioner. The petitioner has provided no in-depth description of the beneficiary's duties that would demonstrate that the beneficiary will be managing or directing the management of a function, department, subdivision or component of the company. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy. 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.