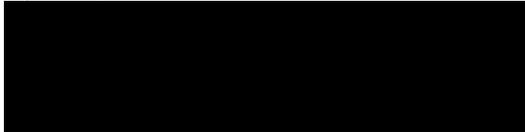


D7

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

identifying information to  
prevent clearly unauthorized  
invasion of personal privacy

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



File: EAC 02 173 53293 Office: VERMONT SERVICE CENTER Date:

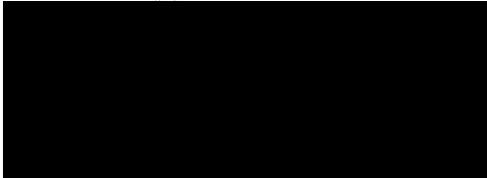
ON RE: Petitioner:  
Beneficiary:



DEC 12 2003

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

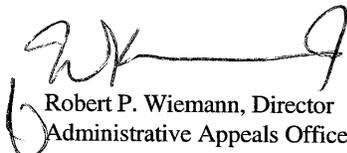
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is engaged in the importation and distribution of oriental rugs. It seeks to employ the beneficiary temporarily in the United States as its vice president for a period of one year. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel emphasizes that this petition was filed as a "new office" insofar as the petitioner merely requests a one-year visa for the company to develop. Counsel argues that the director, by his peculiar interpretation of the regulations, appears to take the position that small companies are effectively precluded from complying with the same. Counsel states that the beneficiary does, in fact, exercise managerial control and authority over the essential functions and operations of the company and that the visa petition should be approved.

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 petitioner is a corporation that originated in the State of New York on February 5, 1997. The petitioner filed its petition on April 25, 2002. Since the petitioner had been doing business for more than one year at the time the visa petition was filed, it shall not be considered under the regulations covering the start-

up of a new business.

The issue in this proceeding is whether the petitioner has established that the beneficiary would be employed in a qualifying managerial or executive capacity in the United States.

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

iv. receives only general supervision or direction from higher level executives, the board of

directors, or stockholders of the organization.

Counsel describes the beneficiary's job duties in the United States as follows:

- a. Administer and oversee all discretionary operations and coordinate the same with the parent company;
- b. Oversee and manage financial operations. Communicate the details of transactions with the parent company on a regular basis and coordinate growth and development while receiving only limited supervision or direction from the overseas parent company;
- c. Oversee general corporate matters, including supervision and hiring of managerial level personnel and initial administrative affairs;
- d. Plan, direct and coordinate company activities in relation to operations, sales, and business organization;
- e. Manage administrative operations including marketing, personnel and general administrative affairs;
- f. Direct the negotiation of related corporate contracts, establishment of business contacts, suppliers, lease negotiations and other relevant discretionary matters;
- g. Develop and implement plans and strategies for long term growth, goals and objectives, and executive marketing of the company;
- h. Train, hire and discharge employees, specifically managerial level employees such as operations manager and sales/marketing manager and to establish and enforce corporate policies and objectives, etc.

In addition to the general job duties described above, the beneficiary will perform the following specific job descriptions such as meeting with lawyers and accountants in regard to corporate business affairs and management decisions; reporting to the parent company abroad, compilation of progress reports, etc.; and preparing meetings, presentations, monitoring and evaluating policies, long term corporate goals, and business plans.

As indicated above, the record shows that the petitioner was incorporated on February 5, 1997. This visa petition was filed on April 25, 2002. At that time, the petitioner indicated that it

will hire additional persons in addition to the existing staff. Specifically, a marketing/sales manager, sales representatives, and import/export clerks.

In this case, the descriptions of the beneficiary's job duties are insufficient to warrant a finding that the beneficiary would be employed in a qualifying managerial or executive position. He would occupy one of the two top jobs in a three-person office. Based upon the record, even with the planned addition of employees, the petitioner has not provided evidence that the beneficiary will be managing a subordinate staff of professional, managerial or supervisory personnel who relieve him from performing non-qualifying duties. The beneficiary is the individual performing the necessary tasks for the ongoing operation of the company, rather than primarily directing or managing those functions through the work of others. 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). 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.