



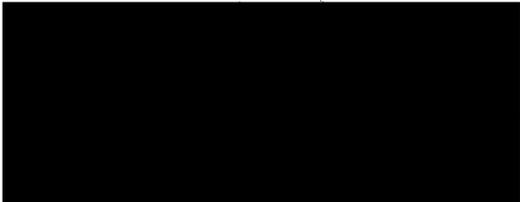
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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File: LIN-01-091-52356

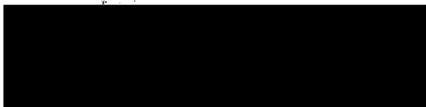
Office: Nebraska Service Center

Date:

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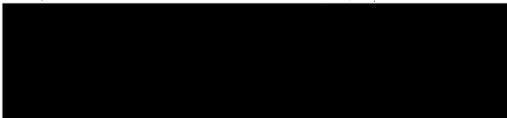
IN RE: Petitioner:

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)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

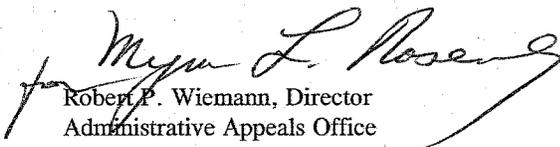
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 Service 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 THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, a wholesale travel agency, seeks authorization to employ the beneficiary temporarily in the United States as its sales specialist. The director determined that the petitioner had not established that the beneficiary had been or would be employed in the United States in a primarily managerial or executive capacity.

On appeal, the petitioner argues that the beneficiary has been and will be employed in a primarily managerial or executive capacity.

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.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United

States: however, the work in the United States need not be the same work which the alien performed abroad.

The U.S. petitioner states that it was established in 1992 and that it is an affiliate of Waka International (NZ) Limited, located in Auckland, New Zealand. The petitioner declares a total of four employees plus two contractors and a gross annual income of \$896,951. It seeks to employ the beneficiary temporarily for a period of three years at a salary of \$750.00 per week.

At issue in this proceeding is whether the beneficiary has been and 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 described the beneficiary's duties as general manager for the foreign entity, as well as her proposed duties with the U.S. entity, in pertinent part, as follows:

The Foreign Position Filled by the Transferee

[The beneficiary's] responsibilities in New Zealand include recruitment and training of staff in the usage of the travel database Pro Tour for accurate costing and bookings, training of staff to obtain Kiwi, Aussie, and the Matai Fiji Islands certifications, overseeing entire booking process, overseeing Operations department work, advising staff on handling the documentation pertaining to relevant countries. She is responsible for coordinating the work of the Sales department, assuring compliance with scheduling needs, and terms and conditions of bookings. She exercises complete day-to-day discretionary authority over the work of the Sales department. In addition, she oversees the work of the Operations department. The Operations manager reports directly to [the beneficiary], who in turn reports directly to the Director.

The U.S. Position to be held by the Transferee

[The beneficiary] will fill the position of General Manager with the Denver office of Waka International, Inc. The position offered [the beneficiary] is a key managerial one, because it is the General Manager who brings together the office team to work on each account, supervises their work, and sets standards for the work and general guidelines.

[The beneficiary's] responsibilities will be very similar to her responsibilities with the New Zealand office. [The beneficiary's] duties will include managing all the operations of both [the] Colorado and California offices. She will have full responsibility for hiring the Operations Manager and staffing the Operations department. This responsibility will include the recruitment and training of staff, over which she will have hiring and firing authority.

[The beneficiary's] responsibilities in [the] Colorado office will also include training programs for the staff in the U.S. offices to obtain Kiwi, Aussie, and the Matai Fiji Islands certifications. She will be overseeing the entire booking process, overseeing the Operations department work, and advising the staff on handling the documentation pertaining to relevant countries.

[The beneficiary] will be responsible for hiring and firing new personnel. She would also direct expansion of the U.S. business, including locating new offices, arranging for their establishments and hiring managerial personnel to run the offices. She will also coordinate the work [of the] associate travel agency Mountain Pacific Travel, which we engaged to perform services on accounts, and which is being compensated on a percentage basis through our company.

In a letter dated February 21, 2001, the petitioner was requested by the Service to provide additional evidence to corroborate the beneficiary's eligibility for the benefits sought.

In response to that request for additional information, the petitioner stated, in pertinent part, that:

[The beneficiary] has held the position of General Manager since June 1997. She occupies the highest level managerial position in our New Zealand office. In this capacity, she has full responsibility for coordination of activities and operation of the company. She sets strategic planning goals, develops advertisement to promote services, plans and implements administrative and operational policies and procedures.

[The beneficiary] operates with no supervision, and reports directly to the Director [named individual]. [The beneficiary's] duties include establishing business policies and objectives. When planning business

objectives, [the beneficiary] confers with the Director.

In the United States, [the beneficiary] fill the position of General manager. She will manage the work of the Colorado office. She will also fully control the work of the California office. In addition, [the beneficiary] will coordinate the work of the outside contractors, associate agency Mountain Pacific Travel.

[The beneficiary] will be responsible for setting planning goals, developing advertisement, planning and implementing administrative and operational policies and procedures. [The beneficiary] will work in coordination with the Manager of Sales and Marketing department, [named individual].

Once the staffing is completed, [the beneficiary] will be responsible for [the] work of the Operations Department, assuring compliance with the documentation requirements. [The beneficiary] will have day-to-day discretionary authority in coordinating the work of the Operations Department.

On appeal, counsel states that the petitioner is submitting new evidence to establish the beneficiary's eligibility. Counsel states that the beneficiary "manages the entire operations in New Zealand. The beneficiary is solely responsible for meeting with new and existing suppliers, making final decisions about engaging suppliers, negotiating contracts with suppliers as well as negotiating [the] best rates for the company." Counsel continues describing the general supervisory responsibilities of the Operations Manager and the Sales Manager for the foreign entity and the projected duties for the Operations Manager of the United States entity. Counsel concludes by describing the clerical and administrative duties of the current employees of Mountain Pacific Travel.

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. Although the petitioner's descriptions have been elaborated, the information provided has been redundant and lacks sufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as setting strategic planning goals, developing advertisement to promote services, planning and implementing administrative and operational policies and procedures, overseeing the entire booking process, overseeing the operations department work, and advising the staff on handling the documentation pertaining to relevant countries, are without any context in which to reach a determination as to whether they would be qualifying. Other duties such as having day-to-day

discretionary authority in coordinating the work of the operations department has not been demonstrated to be managerial or executive in nature. The use of the position title of "general manager" 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 other than in position title.

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.

Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, there is insufficient evidence to demonstrate that there is a qualifying relationship between the U.S. and foreign entities, or that the U.S. and foreign entities are doing business. As the appeal will be dismissed for the reasons stated above, these issues need not be examined further.

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.