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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: EAC-02-002-55183 Office: Vermont Service Center Date:

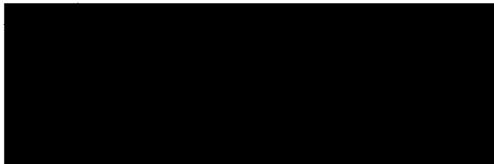
FEB 28 2003

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)

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

Mym L. Roseberg
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, an international commercial airline, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its assistant station manager. 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, counsel argues that the beneficiary is clearly qualified and that his duties satisfy the definition of a "functional manager."

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 1923 and that it is a branch of Aeroflot Russian Airlines. The petitioner declares 25,000 employees and an unspecified gross annual income. It seeks to extend the petition's validity and the beneficiary's stay for three years at an annual salary of \$26,000.

At issue in this proceeding is whether the beneficiary has been or 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 follows:

[The beneficiary] has worked for Aeroflot from 1997 to the present without interruption. He is currently serving as Assistant Station Manager for Aeroflot's New York station at John F. Kennedy Airport. Generally, his duties include supervising approximately ten other Aeroflot employees; supervising the work of independent contractors at the station; responsibility for overseeing the administrative and operational work; working together with INS and U.S. Customs staff; and personnel decision-making responsibilities. Further, [the beneficiary's] duties include passenger booking, ticket sales and sales promotions.

[The beneficiary] assists the station manager in overseeing all Aeroflot operations in the JFK airport. [The beneficiary's] job entails ensuring proper ground operations, complete flight readiness for takeoff, overseeing passenger and baggage check-in, security, passenger boarding, and baggage loading. In addition,

[the beneficiary] is responsible for preparing and signing all flight documents, and assisting in occasional negotiation of service provider and vendor contracts related to airport operations, such as technical services, catering and cargo handling. [The beneficiary] is also responsible for recruiting, interviewing and hiring new employees and maintaining positive employee relations.

Aeroflot hires independent contractor service providers to perform most services for the airline. These service providers and their respective areas of services are: Delta Airlines-grant [sic] handling, which includes technical plane servicing, ramp services, check-in services, security services, boarding and clearance (25 employees); LSG Sky Chief [sic]-catering (10 employees), and Evergreen Airlines-cargo handling (10 employees).

[The beneficiary] is responsible for overseeing the work of all the independent contractor staff working for Aeroflot at JFK airport in New York and ensuring order and efficiency at the station.

In a letter dated November 16, 2001, the Service requested that the petitioner submit documentation describing its organizational structure in the United States, to include detailed position descriptions of all employees subordinate to the beneficiary.

In response to the Service's request for additional evidence, the petitioner submitted two separate charts.

The first chart indicated that there were seven (7) subordinate supervisors to the position of "assistant" station manager; five (5) passenger service supervisors and two (2) cargo service supervisors. The position of passenger service supervisor was described as "responsible for passenger and baggage check-in onto flights; address passengers' problems and issues with commute." The position of Cargo Service Supervisor was described as "responsible for all aspects of cargo handling."

The petitioner submitted a second organizational chart indicating that the New York operation was managed by a district manager, who oversees a station manager, who oversees a "Shift" station manager, the beneficiary being identified as one of two shift managers. The organizational chart indicated that a check-in supervisor and a cargo supervisor reported to the shift supervisor.

On appeal, counsel states that the director's conclusions were incorrect and asserts that the beneficiary is employed in a managerial or executive capacity. Counsel reiterates that the

beneficiary supervises both Aeroflot employees and independent contractors, overseeing "all ground operations" at the station.

Counsel further states, in pertinent part, that:

As part of his job as Assistant Manager of the Aeroflot station, [the beneficiary] also must exercise discretion over the station's day-to-day operations in the airport such as ensuring proper ground operations, flight readiness checks, overseeing passenger and baggage check-in, security, passenger boarding, baggage loading, and decisions in connection with delegation of tasks to employees. Finally, [the beneficiary] oversees Aeroflot's immigration and customs work in conjunction with INS and U.S. Customs officials at the airport.

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. There is insufficient detail regarding any actual duties of the assignment to overcome the objections of the director. Duties described as ensuring proper ground operations, performing flight readiness checks, overseeing passenger and baggage check-in, overseeing security, passenger boarding, baggage loading, and making decisions in connection with delegation of tasks to employees, do not persuasively demonstrate that the beneficiary has been and will be employed in a primarily managerial or executive capacity. The description of the beneficiary's duties, without further elaboration, is simply not sufficient to demonstrate the beneficiary's managerial or executive responsibilities. The description of duties provided is too general and vague to convey any understanding of exactly what the beneficiary has been and will be doing on a daily basis. It must be evident from the documentation submitted that the majority of the beneficiary's actual daily activities have been and will be managerial or executive in nature. The petitioner has provided no comprehensive description of the beneficiary's duties to establish this. The record does not clearly reflect that the beneficiary has not been and will not be primarily involved in performing the day-to-day functions of the petitioning entity.

Further, it has not been demonstrated that the beneficiary has been and will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve the beneficiary from performing nonqualifying duties. Based on the evidence submitted, it cannot be determined that the beneficiary has been and will be employed in a primarily managerial or executive capacity.

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.

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.

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