

D7

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

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass. Ave., 3rd Floor  
Washington, D.C. 20536

[Redacted]

File: EAC 01 214 52848 Office: VERMONT SERVICE CENTER Date:

JUL 08 2003

IN RE: Petitioner:  
Beneficiary:

[Redacted]

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:

[Redacted]

**PUBLIC COPY**

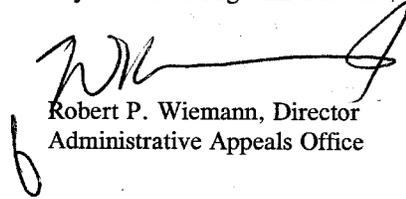
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a diamond manufacturer, importer and retailer. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. 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 disputes the director's findings in a brief.

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(l)(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 (l)(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(l)(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 (l)(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 1994 and that it is a subsidiary of [REDACTED] located in Mumbai, India. The petitioner declares five employees and over \$2 million in gross annual revenues. The petitioner seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of \$48,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be employed primarily in a 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 director has restated the beneficiary's duties as provided by the petitioner initially in support of the petition and, subsequently, in response to the director's request for additional evidence. Thus, there is no need to duplicate the director's efforts by restating those duties in this decision. Upon reviewing the beneficiary's lists of duties, the director concluded that the petitioner has failed to establish that the beneficiary has been and will be employed in a managerial or executive capacity. The director noted that the beneficiary appears to be performing sales, marketing, and customer service functions, none of which are qualifying duties.

On appeal, counsel asserts that the director's conclusion is erroneous and provides the following additional list of the beneficiary's duties in the United States:

- Formulating the company's long- and short-term goals;

- Researching the international diamond market in order to develop marketing and sales strategies . . . ;
- Meeting with and supervising the Sales and Marketing Manager in order to communicate the market research and instruct the Sales and Marketing Manager regarding preferred course of action;
- Setting and controlling budgets and related fiscal matters . . . ;
- Exercise discretion over the daily operations . . . ;
- Organizing and establishing office systems and procedures;
- Negotiating contracts and conducting follow-up with clients through the Sales and Marketing Manager and Sales Representative who serve as liaisons between the President and clients;
- Hiring, firing, and determining compensation . . . ;
- Determining customer requirements as per feedback from Marketing/Sales Representative;
- Reviewing and analyzing the financial status of business customers and then setting appropriate terms and amounts of lines of credit . . . ;
- Communicating with suppliers/distributors to negotiate contract arrangements, communicating with banks . . . , and representing Gopi Diam in its dealings with diamond insurers . . . ;
- Engaging in general customer and public relations including follow-up with clients . . . and serving as Gopi Diam's chief representative to its clients and business associates;
- Communicating with parent company . . . ;
- Supervising and working in conjunction with the Quality Control Manager regarding all inventory issues including the preparation of periodic reports concerning the quantity and value of the inventory;
- Supervising the Bookkeeper in the collection of all accounts receivable . . . and assisting the CPA in the preparation of taxes

Counsel also provides a breakdown of duties of each of the beneficiary's four subordinate employees and argues that the size of the petitioner's staff should not be used to evaluate the petitioner. However, the Bureau's concern is not with the size of a petitioner's staff, but with whether the beneficiary is relieved from having to perform nonqualifying tasks. Whether that relief is in the form of private contractors or individuals working directly for the petitioner is not relevant as long as it can be established that the beneficiary is primarily performing managerial or executive duties.

In the instant case, the most recent description of the beneficiary's duties, as provided on appeal, supports the director's findings. While this list indicates that the beneficiary has some discretionary authority over the subordinate staff and over the direction of the petitioning organization, he is, nevertheless, conducting research, developing marketing strategies, engaging in customer relations and assisting the quality control manager. Furthermore, the record contains a number of invoices regarding merchandise shipped from the foreign parent company to the petitioning organization. Most of these invoices, with few exceptions, contain the beneficiary's signature. Even though the petitioner claims to employ a sales and marketing representative, whose dominant role is to sell the petitioner's products, the beneficiary's signature on sales invoices further indicates that he continues to participate in duties related to the sales function. Although the beneficiary is assisted in performing several of these nonqualifying functions, the petitioning organization has not yet grown to the point where the beneficiary can primarily focus on managerial or executive duties. It is clear that his direct involvement is still needed in duties that cannot be deemed managerial or executive. 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).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The fact that an individual manages a small business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. The record does not establish that the beneficiary's duties have been or will be primarily directing the management of the organization. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel who relieve her from performing nonqualifying duties. The petitioner has not demonstrated that it has reached or will reach a level of organizational complexity wherein the

hiring/firing of personnel, discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis. Nor does the record demonstrate that the beneficiary primarily manages an essential function of the organization. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying 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.