

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

**PUBLIC COPY**

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

NOV 13 2003

FILE: EAC 02 274 51343 Office: VERMONT SERVICE CENTER Date:

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:

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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 Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal.

The petitioner is an international airline company seeking to employ the beneficiary temporarily in the United States as the sales and marketing manager of its U.S. branch office. 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 asserts that the beneficiary has been and would continue to act in a managerial capacity and is eligible for L-1 classification. The petitioner submits an additional letter on appeal in support of the petition.

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 U.S. petitioner states that it was established in 1948 and that it is a branch of Icelandair, whose main office is located in Iceland. The petitioner seeks to employ the beneficiary in the United States for a total of two years at an annual salary of \$68,000.

The beneficiary is currently the foreign entity's sales manager. The petitioner is seeking to employ the beneficiary in that same role at one of its offices in the United States.

Regulations at 8 C.F.R. § 214.2(l)(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.
- (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.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Immigration and Nationality Act ("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.

The original handwritten petition was barely legible and was not supported by any evidence. However, the petitioner did submit a statement in support of the assertion that the beneficiary's duties in the United States would be the same as the duties the beneficiary currently performs abroad. Those duties were listed as follows:

[P]ricing of services, product development, and approving contracts with travel agencies and tour operators. [The beneficiary] is also responsible for

the telephone sales department, corporate sales and group departments.

Counsel also stated that in the U.S. position, the beneficiary would manage a staff of 25 sales and marketing people responsible for sub-regions in North America.

On November 8, 2002, the director issued a request for additional evidence. Among the evidence requested was a list of the beneficiary's duties with a weekly breakdown of time spent performing each of those duties. The petitioner was also asked to provide additional evidence showing the management and personnel structures of the U.S. branch, as well as evidence of the beneficiary's education and training.

Counsel responded to the above request with a statement that included the following description of the beneficiary's proposed position with the U.S. office:

The position of Sales Manager requires the person occupying it to manage the sales of our services and to insure that this is done consistent with the company's policies and guidelines. The Sales Manager has discretionary day to day authority to bind the company to sales agreements with travel agents [and] tour operators arranged by the sales staff and to set and negotiate prices for our travel services.

The Sales Manager is also responsible for maintaining the performance of his/her sales staff, managing the arrangement of sales presentations for print and radio advertisement and trade shows[,] as well as assigning and reassigning his staff or terminating their employment, if necessary.

The petitioner also provided a description of the petitioner's hierarchical structure that, although brief, was sufficient for the purpose of indicating that the beneficiary's position is towards the top of the scheme of the overall organization.

The director concluded that the petitioner failed to establish that the beneficiary would be employed in the United States in a managerial or executive capacity. Citing 8 C.F.R. § 103.2(b)(14), which states that failure to submit requested evidence that precludes a material line of inquiry shall be

grounds for denying the petition, the director noted that the petitioner's counsel did not fully respond to the request for evidence.

The director is correct in determining that counsel ignored the request to provide an hourly breakdown of the beneficiary's duties. The failure to submit the hourly breakdown of the beneficiary's duties cannot be deemed dispositive in the instant case, however, since the petitioner did provide a description of the beneficiary's duties that is sufficient to allow the AAO to conclude that the beneficiary will be acting in a managerial capacity.

On appeal, the petitioner provides a more detailed description of the petitioner's hierarchy, thereby illustrating the beneficiary's prominent place at the top of the organization. Counsel also states that the beneficiary has complete discretion in preparing and spending his department's budget and is in complete control over hiring and firing any personnel that are directly or indirectly under his managerial supervision.

It is noted that counsel attempted to address the director's request for additional evidence by inferring that the director's general familiarity with the petitioning entity and prior approvals of other petitions filed by the same petitioner are an indicator of the instant petition's validity. However, there are no statutes or regulations that permit the director to make such assumptions of fact without proper evidence to support the petition. Precedent case law is clear in placing a burden on the petitioner to submit documentary evidence to support each petition; simply going on record is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The sole basis for sustaining this, or any other appeal, is the determination that the petitioner has met its statutory burden of proof. In the instant case, the record sufficiently demonstrates that the beneficiary will control a subordinate staff of managerial and professional personnel who will relieve him from performing nonqualifying duties. The petitioner has adequately established that the beneficiary has been and will be employed in a primarily managerial capacity.

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, the petitioner has met that burden.

**ORDER:** The appeal is sustained. The petition is approved.