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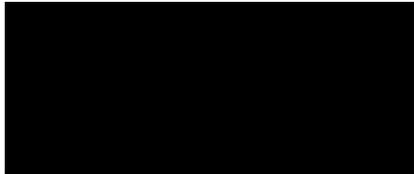
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U.S. Department of Homeland Security

Citizenship and Immigration Services

D1

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

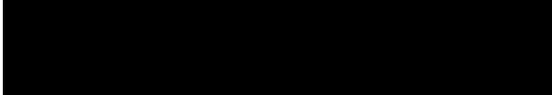


File: EAC 02 061 52763

Office: VERMONT SERVICE CENTER

Date: **NOV 17 2003**

ON 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:



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. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is engaged in commercial and residential flooring work. It seeks to continue to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary has been or would be acting in primarily a managerial or an executive capacity.

On appeal, counsel states that the director has erred in denying the requested extension of L-1A status to the beneficiary. Counsel further states that the beneficiary's primary duties are far from installation of tile, as he is the President of the U.S. entity and acts as CFO, Manager, Designer and Sub-Contractor for the business. Counsel also cites an unpublished decision in support of the appeal.

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.

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 issue to be addressed in this proceeding is whether the petitioner has established that 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 describes the beneficiary's job duties as follows:

The reason we are requesting that [REDACTED] allowed to maintain his L1A status is because John has allowed our company to expand its commercial territory into the United States. [REDACTED] is required to manage a team of tile installers. [REDACTED] is a tile designer and he is hired to design unique tile arrangements. John himself installs some of the designs, other times he supervises a team of installers, and sometimes other companies use [REDACTED] as their managing sub-contractor. In those cases the installers are the employees of the contracting company and therefore [REDACTED] staff requirement is often limited to [REDACTED] himself. Of course on larger jobs [REDACTED] World will hire tile specialists on a part time basis to help [REDACTED] oversee other teams of installers.

The record reflects that the beneficiary is the petitioner's only permanent employee in the United States. The record also reflects that the petitioner issued Internal Revenue Service tax forms (Form 1099-MISC) for two contract employees in 2001, its CPA and a tile installer.

Counsel refers to an unpublished decision involving an employee of the Irish Dairy Board. In the Irish Dairy Board case, it was held that the beneficiary met the requirement of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee of the petitioning organization. However, counsel has furnished no evidence to establish that the facts of the instant case are in any way analogous to those in the Irish Dairy Board case. Simply going on record without supporting documents is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, while 8 C.F.R. 103.3(c) provides that Service precedent decisions are binding on all Service employees in the administration of the Act, unpublished decisions are not similarly binding.

The petitioner's description of the beneficiary's job duties is insufficient to warrant a finding that the beneficiary will be employed in an executive or managerial capacity. It appears, at most, the beneficiary will be performing operational rather than managerial duties. The petitioner has provided insufficient evidence to establish that the beneficiary will be managing or directing the management of a function, department, subdivision or component of the company.

Based upon the record, 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. Rather, 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.

Beyond the decision of the director, the record is not persuasive and does not contain sufficient documentation to establish that a qualifying relationship exists between the petitioner and a foreign firm, corporation or other legal entity. See 8 C.F.R. § 214.2(1)(1)(ii)(G). As the appeal will be dismissed for the reasons stated above, this issue 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.