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Citizenship and Immigration Services

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



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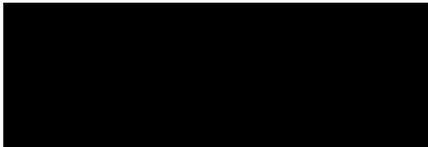
IN RE: Petitioner:  
Beneficiary:



NOV 19 2003

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:



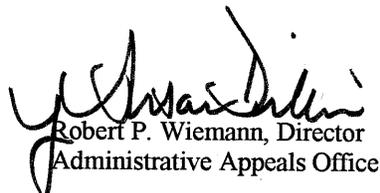
**INSTRUCTIONS:**

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner claims to be a seafood wholesaler business. It seeks to employ the beneficiary temporarily in the United States as its export and import manager. The director determined that the evidence did not establish that: (1) the beneficiary's duties with the foreign entity involved responsibilities that were primarily managerial or executive in nature; (2) the beneficiary's proposed U.S. duties will be in a managerial or executive capacity; and (3) the foreign entity would continue to conduct business if the beneficiary were transferred to the United States.

On appeal, the petitioner disagrees with the director's determination and asserts that the beneficiary's duties have been and will be managerial or executive in nature and that the record demonstrates that the foreign entity is doing business and will continue doing business for the duration of the beneficiary's stay in the United States.

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 regulation at 8 C.F.R. § 214.2(1)(1)(ii) states, in part:

*Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity

that is managerial, executive or involves specialized knowledge.

The regulation at 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.

According to the documentary evidence contained in the record, the petitioner was established in 1935 as a seafood wholesaler business. The petitioner states that the U.S. entity is a parent of [REDACTED] located in Iceland. The petitioner declares 80 to 125 employees and \$40 million in gross income. The petitioner seeks the beneficiary's services as the manager of its export and import division for three years, at a yearly salary of \$40,000.

The first issue in this proceeding is whether the petitioner has established that the beneficiary has been 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:

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.

In response to the director's request for additional evidence counsel states that the beneficiary has been responsible for the profitable operation of the foreign entity, including profit and loss accountability, sales growth, expense control, setting the purchase and negotiating the sales prices of products. Counsel goes on to state that the primary decision made by the

beneficiary during his employ with the foreign entity was determining the price to charge for the product to be exported, and the price the company would be willing to pay to import fish products.

In a letter written by the beneficiary, from the foreign entity, the beneficiary's responsibilities are described as:

[The beneficiary] is responsible for the day-to-day running of the company, which includes brokering fish products, buying and selling same [sic], setting up logistical solutions for export etc. [The beneficiary] maintains and enhances contacts with producers as well as customers, and in that capacity takes on travels to Mainland Europe as well as the U.S. [The beneficiary] supervises the Office Manager, who is responsible for bookkeeping, paperwork etc.

The director determined that the evidence submitted was insufficient to establish that the beneficiary has been employed primarily in a managerial or executive capacity. In rendering his decision, the director specifically states:

[The beneficiary's] job title with the foreign entity is identified as general manager. A review of the description of the beneficiary's duties abroad does not credibly establish that he has been employed in a primarily managerial capacity. Rather, his duties such as "brokering fish products, buying and selling same, setting up logistical solutions for export...maintains and enhances contacts with procedures as well as customers" are clearly operational, not managerial or executive in nature. While you have alluded to the fact that the beneficiary is responsible for the day to day running of the business of the foreign entity and that he supervises the "office manager", the preponderance of his duties do not qualify as managerial or executive duties for L1A purposes.

The beneficiary has not been shown to possess the requisite one continuous year of experience abroad in a qualifying managerial or executive capacity.

On appeal, counsel fails to address the issues raised or objections made by the director with respect to the beneficiary's employment with the foreign entity. Neither has

there been sufficient documentary evidence submitted on appeal to refute the director's decision. 8 C.F.R. § 103.2(b)(12) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." The record demonstrates that the beneficiary supervises a non-professional employee and is also responsible for performing the day-to-day services of the foreign entity. The petitioner has failed to submit evidence that demonstrates that the beneficiary manages the organization, supervises and controls the work of other supervisory, professional or managerial employees, functions at a senior level within the organizations hierarchy, or exercises discretion over the day-to-day operations of the function of the foreign entity. Evidence submitted by the petitioner is insufficient to establish that the beneficiary has been employed by the foreign entity in a managerial or executive capacity for one continuous year. The evidence shows that the beneficiary traveled to the United States in May of 2000. The duration of his stay in the United States has not been clarified. In addition, there is no evidence to show that the beneficiary was anything other than a sales representative and first-line supervisor prior to the purchase of the foreign entity by the U.S. entity in August of 2000. It is noted that the petition in the instant matter was submitted January 2, 2001. Accordingly, the petitioner has not established that the beneficiary has been employed by the foreign entity for one continuous year and primarily in a managerial or executive capacity. Therefore, the director's decision on this issue shall not be disturbed.

A second issue in this proceeding is whether the petitioner has established that the beneficiary will be employed by the U.S. entity in a managerial or executive capacity.

In a statement of support of the L-1A petition, the petitioner stated that the U.S. entity was moving the export/import function from the foreign entity to the U.S. in hopes of expanding its business. The petitioner continued by stating that the beneficiary would oversee and manage the export/import division, reporting to the vice president. The petitioner also stated that there would be at least two employees that the beneficiary would oversee in the near immediate future. The petitioner also provided a copy of a position description taken from the Directory of Occupational Titles (DOT 163,117-014) and described the beneficiary's proposed job duties in the United States as:

Directs foreign sales and service outlets of an organization: Negotiates contracts with foreign sales and distribution centers to establish outlets. Directs clerical staff in expediting export correspondence, bid requests, and credit collections. Directs conversion of products from American to foreign standards and specifications to ensure efficient operation under foreign conditions. Arranges shipping details, such as export licenses, customs declarations, and packing, shipping, and routing of product. Directs clerical and technical staff in preparation of foreign language sales manuals. Expedites import-export arrangements and maintains current information on import-export tariffs, licenses, and restrictions.

An organizational chart of the U.S. entity showed the beneficiary's proposed position as import and export manager, with Italian sales representative, administration, lobster packers, fish cutters and packers, and international labeled as subordinate positions.

The beneficiary's proposed job duties are described in the response letter to the director's request for additional evidence as:

[O]verall responsible for the international sales staff; joint authority over the international sales representative for Italy, the lobster packers, the fish cutters and packers; authority to hire and fire employees, with the ultimate decision resting with the vice president; and runs the day-to-day operations of the division.

The petitioner continues by stating that the beneficiary will also be responsible for managing the import/export function of the U.S. entity, and training subordinates to meet designated yield and quality specifications.

The director determined that the petitioner failed to establish that the beneficiary would be primarily engaged by the U.S. entity in the performance of executive or managerial duties. The director noted that the petitioner failed to fully comply with the director's request for detailed evidence regarding the U.S. entity's staffing of the export/import department. The director further stated that the beneficiary's duty descriptions were so vague that they gave no clear indication of the

beneficiary's proposed day to day duties. The director also stated that the petitioner failed to present evidence detailing the prospective employees' position titles and descriptions. The director concluded by noting that the petitioner has not established that the beneficiary will be managing a function of the U.S. entity, nor has it been shown that the beneficiary will function at a senior level within the organization hierarchy.

On appeal, counsel rejects the director's findings and submits a brief and evidence in support of the petition. Counsel states that the beneficiary is extremely knowledgeable about specific packing requirements and cutting techniques, and knows how to deal with wholesalers, and how to abide by customs regulations. Counsel further asserts that the beneficiary is expected to teach the U.S. entity's domestic staff based upon his acquired knowledge. Counsel continues by stating that the beneficiary will be the one who decides in what countries to seek products, and in turn, he will instruct the sales department to procure the products; he will establish purchasing parameters; he will take direction from the Vice President, and he will be responsible for overseeing the foreign product market. In addressing the functional manager issue, counsel contends that the beneficiary will be responsible for the export and import division of the company. Counsel further maintains that the beneficiary will oversee foreign imports and domestic export products.

A revised version of the U.S. entity's organizational chart depicts an import and export manager's position with national sales (4) and international sales (2) as direct subordinates, and lobster packers (8) and fish cutters (8) as subordinate to the sales staff. However, there is no indication from the record that these subordinate positions actually exist.

On review of the record, the petitioner has not established that the beneficiary will be employed by the U.S. entity in a managerial or executive capacity. The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. Proposed duties described as: responsible for international sales staff; authority over lobster packers and fish cutters and packers; and authority to hire and fire employees are without any context in which to reach a determination as to whether they are qualifying as managerial or executive. The vague position description is insufficient to establish that the beneficiary's proposed job duties are managerial or executive in nature. Utilizing a position description from the *Dictionary of Occupational Titles* is not sufficient to demonstrate how, in fact,

the beneficiary will carryout his specific duties for the U.S. entity. Furthermore, the petitioner has not provided persuasive evidence to establish that the beneficiary will be managing the organization, or managing a department, subdivision, function, or component of the company, at a senior level of the organization hierarchy. The record demonstrates that the beneficiary will initially be training subordinates and hiring other individuals to train and eventually utilize in the export/import division of the U.S. entity. There is no evidence to show that the beneficiary will be doing anything other than performing the function of the division, rather than managing the function. The record does not demonstrate that the U.S. entity contains the organizational complexity to support the proposed managerial or executive staff position within the export/import division. The record does not support a finding that the petitioner will be supervising a subordinate staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties. Although requested by the director, the petitioner failed to submit additional evidence dealing with position descriptions for all individuals employed in the import and export division of the U.S. entity, and a breakdown of the number of hours devoted to each of their job duties. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Furthermore, the record does not establish that the beneficiary will be primarily managing a function of the organization. The beneficiary's proposed job description depicts an individual in charge of the day-to-day services of the organization, not that of a functional manager. When managing or directing a function, the petitioner is required to establish that the function is essential and that the manager is in a high-level position within the organizational hierarchy, or with respect to the function performed. The petitioner must also demonstrate that the executive or manager does not directly perform the function. Although counsel argues that the beneficiary will be managing an essential function of the U.S. entity by directing all aspects of the export/import division, the record does not demonstrate that the beneficiary will be primarily managing or directing, rather than performing, the function. The petitioner has failed to provide a detailed position description specifying exactly what the management of the corporate functions associated with the export/import of fish products will entail. The record must further demonstrate that there are qualified employees to perform the function so that the beneficiary is relieved from performing non-qualifying duties. In the instant matter,

counsel states that the beneficiary will train the current staff to perform the function and hire and train additional staff in the near immediate future to work within the division. In the absence of detailed information regarding whom the beneficiary is to manage and how he is to manage them, the record is insufficient to establish that there are qualified employees to relieve the beneficiary from performing the function. Absent details concerning the staffs' position descriptions, daily activities, and percentage of time spent performing each duty, the record is insufficient to establish that the beneficiary will be managing rather than performing the function.

The petitioner's evidence is not sufficient in establishing that the beneficiary will be directing the management of the organization or a major component or function of the organization; establishing the goals and policies of the organization; exercising wide latitude in discretionary decision-making; and receiving only general supervision or direction from higher level executives. Training employees to work in a division of the U.S. company cannot be equated with managing an organization or a function thereof. Nor do the proposed duties demonstrate that the beneficiary will establish goals and policies or exercise wide latitude in discretionary decision-making. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title. Based upon the evidence furnished, it cannot be found that the beneficiary will be employed in a primarily managerial or executive capacity. For this reason, the director's decision on this issue will not be disturbed.

The third issue in this proceeding is whether the foreign entity will continue to be a qualifying organization if the beneficiary is transferred to the United States.

The regulations at 8 C.F.R. § 214.2(1)(1)(ii)(G) state:

*Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in

the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The foreign entity is described as an exporter and importer of seafood products. It is characterized as a subsidiary of the U.S. entity. The record shows that it is located in Reykjavik, Iceland. The evidence established that the foreign entity has a total of two employees, the beneficiary as general manager and an office manager. The petitioner notes that the foreign entity's gross income from sales in 1999 was approximately US\$1.2 million. The petitioner also maintains that the beneficiary supervises the office manager, who is responsible for bookkeeping, paperwork etc. The evidence also establishes that the petitioner intends to transfer the beneficiary to the U.S. entity for a period of three years.

The director determined that the foreign entity's future viability brings into question whether the U.S. entity will continue to qualify as an organization doing business in the United States, and at least one other country during the requested period of approval on behalf of the beneficiary. The director also states: "[A]s the beneficiary appears to be the one conducting the business of the foreign entity, it is questionable that the foreign entity will continue to be actively engaged in the provision of goods and services should the beneficiary be transferred to the United States."

On appeal, counsel objects to the director's conclusions and contends that during the anticipated stay of the beneficiary in the United States, the foreign entity must continue to engage in commerce or it will lose its critical air cargo allotment.

Counsel's assertions are not persuasive. There has been no evidence submitted to show that anyone has been designated to substitute for the beneficiary in his absence at the foreign entity. The record does not demonstrate that the office manager is capable of solely maintaining a US\$1.2 million dollar a year enterprise. There has been no documentary evidence submitted to substantiate counsel's claim that the foreign entity must remain viable or lose its critical air cargo allotment. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these

proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has failed to establish that the foreign entity will remain a viable business entity, thus bringing into question the U.S. entity's ability to continue to qualify as an organization doing business in the United States, and at least one other country during the requested period of approval on behalf of the beneficiary.

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.