U.S. Department of Homeland Security

Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

NOV 19 2003

File: EAC 01 006 51507 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

PUBLIC COPY

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 nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an importer and exporter of ceramic products. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its general manager and president. 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 director's denial was not warranted in light of the evidence submitted by the petitioner and submitted a brief in support thereof.

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)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

> A) Sufficient physical premises to house the new office have been secured;
>
> B) The beneficiary has been employed for one continuous

year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The U.S. petitioner states that it was established in the year 2000 and that it is a wholly-owned subsidiary [redacted] Materials Factory, located in Guangdong Province, China. The petitioner seeks to employ the beneficiary in the United States for three years at an annual salary of $21,600.

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.

In support of the petition, the petitioner provided the following list of the beneficiary's proposed duties in the United States:

- establish corporate management structure and operation guidelines regarding management, sales, financial and accounting systems, etc.;
- formulate immediate goals for expansion and long-term business policies;
- supervise business activities of all subordinates in aspects of business operations, earning and expenses;
- exercise authorities in budget allocation and control;
- direct the preparation of financial plans and annual budget reports for review by the Parent Company;
- coordinate operations between offices in China and the

United States;
- exercise personnel management authority concerning hiring, discharging, promotion and transferring of subordinates; and
- devote 90% of her time to providing only executive services.

On November 16, 2000, the Service sent the petitioner a notice requesting additional evidence. The request instructed the petitioner, to submit, in part, descriptions of the beneficiary's past and proposed duties.

In regards to the latter request, the petitioner provided the following statements:

> As department manager, Ms. [redacted] was responsible to market the tile products manufactured by the foreign entity. That included introduction of products to customers on-site at the company and off-site at customers' locations. This allowed her to understand the needs of the customers in the market.
>
> As manager, Ms [redacted] ust know that the products meet the markets both domestically and internationally. She attended frequently to ceramics products exhibitions throughout China. She also visited ceramics products exhibitions held in Hong Kong, Thailand, Germany ....
>
> * * *
>
> During her visits here, Ms [redacted] successfully negotiated with Oceanic International Inc., . . . to procure a sales contract to import ceramics products manufactured by the foreign entity and to distribute the products in the United States. . . .

In response to the latter request for the beneficiary's proposed duties, the petitioner submitted a list that is virtually identical to the one originally submitted in support of the petition, with the exception of the added weekly breakdown of hours for each proposed duty.

The director denied the petition, concluding, in part, that the petitioner had failed to establish that the beneficiary will be performing primarily in a managerial or executive capacity. The director further noted that "it seems likely that she will be principally involved in selling your foreign parent's products in your showroom."

On appeal, counsel asserts that the petitioner met its burden of proof and that the director's decision is not supported by the evidence of record. Counsel further states that "[t]he Service

cites no specific facts that the Beneficiary's duties were that of a sales person." However, the burden of proof remains on the petitioner to establish eligibility for an L-1A visa. *Matter of Caron International, Inc.*, 19 I&N Dec. 791 (Comm. 1988). In the instant case, the petitioner clearly stated, per the above description of the beneficiary's duties abroad, that the beneficiary was responsible for marketing the foreign entity's tile products and directly introducing the products to customers at a variety of locations. Thus, by the petitioner's own admission, the beneficiary's duties abroad were not primarily managerial or executive even though the foreign entity has been incorporated since 1996, and has thereby been established considerably longer than the U.S. petitioner. Consequently, the beneficiary's prior duties and the vague description of her proposed duties do not adequately establish that the beneficiary will primarily function in the capacity of a manager or executive.

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. While the description of the beneficiary's proposed duties in the United States gives a general idea of her managerial authority, the description is too vague and general to convey a true understanding of what the beneficiary would be doing on a daily basis. Furthermore, the record clearly indicates that the beneficiary has been involved in personally handling client matters and was directly involved in contract negotiation, neither of which are qualifying duties. Reliance on the beneficiary's position title of "president" or "general manager" is not persuasive.

The record contains insufficient evidence to demonstrate that the beneficiary has been or will be employed in a managerial or executive capacity. The petitioner has not shown that the beneficiary has been or will be functioning at a senior level within an organizational hierarchy. Further, the petitioner's evidence is not persuasive in establishing that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing nonqualifying duties. Based on the evidence submitted, it cannot be found that the beneficiary has been or will be employed in a primarily executive or managerial 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.