

Department of Homeland Security  
Citizenship and Immigration Services

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

NOV 25 2003

File: WAC-02-025-52897 Office: California 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)

IN BEHALF OF PETITIONER:

**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 which 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 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 Acting Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner operates a discount 99 cent store. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its "general manager." The acting 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, the petitioner's counsel asserts that the beneficiary fulfills all the requirements of a manager.

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(l)(14)(ii) state 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 (l)(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 stated that it was established in 1993, and that it is a wholly owned subsidiary of Sapna Wines, located in Maharashtra, India. The petitioner declared five employees and a gross annual income of approximately \$500,000.00. It seeks to extend the petition's validity and the beneficiary's stay for one year at an annual salary of \$30,000.00.

The issue to be addressed in this proceeding is whether 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 described the beneficiary's duties, in pertinent part, as follows:

Meeting with the manager to discuss sales promotion (30%), performance and problems (if any) of staff members (10%).

Go to purchase Merchandise for store from wholesale market. Buy goods needed and also look for new products and purchase them (20%).

Discuss with manager regarding [sic] ways to expand the business (10%).

Work with joint secretary regarding sales promotion, and advertising strategy (10%).

Call for a staff meeting to discuss regarding [sic] job performance and suggestions, if any (10%).

Assign work to the secretary for the day, dictate letters, answer calls, return calls. (10%).

The petitioner submitted an organizational chart reflecting its employee positions. The chart indicated that the beneficiary served as president and that he had reporting to him a manager, a joint secretary and a secretary. The chart further indicated that the position of joint secretary had two cashiers and a stock clerk reporting to it.

Additional evidence submitted by the petitioner indicated that it actually had employees in the positions of joint secretary [named individual], hired on January 1, 2002, at a salary of \$1,000.00 per

month; manager [named individual], hired on September 10, 2000, at a salary of \$900.00 per month; and, secretary [named individual], hired on April 1, 1999, at a salary of \$500.00 per month.

The petitioner submitted additional evidence in the form of DE-6 wage reports for the period between March 2001 and March 2002. This evidence indicated that the manager did not work after the second quarter of 2001. The wage reports indicated that the petitioner had several other employees during the time period for which no position descriptions or other employment information was provided.

A Form 1120-A U.S. Corporation Short-Form Income Tax Return for the year 2000, submitted by the petitioner, indicated that the U.S. company paid only \$16,927.00 in total salaries and wages during the year 2000.

On appeal, counsel asserts that:

[The beneficiary] does manage the organization. His job entails managing the complete store with the manager reporting to him. [The beneficiary] is responsible for the sales promotion, staff members which include hiring and firing, [and] negotiating prices at the time of purchasing goods for the store. He is responsible for buying and looking for new products for the store. This aspect of his job is very critical since the sale and success of the business is dependent upon the right judgment of the saleable products.

[The beneficiary] does supervise and control the work of the manager, joint secretary and secretary. He manages the essential function of "buying" which is critical to the success of the business.

[The beneficiary] has the authority to hire, fire or recommend promotions, [and] leave authorizations. he transfers this authority to other senior personnel within the company because of time constraints.

[The beneficiary] is not a first-line supervisor. He exercises discretion over the day-to-day operation of the business. He does supervise and control the work of the manager and joint secretary, who are professionals.

Enclosed, please find Forms DE-6, Quarterly Wage and Withholding Reports. In the last quarter ending March 31, 2002, you will notice that [named individual] (joint secretary's) name is on the report. He was on leave of absence and has since returned to work. [Named

individual] (manager) is no longer with the company. She has resigned to be a full-time student.

The information provided by the petitioner does not describe in sufficient detail any of the actual duties of the beneficiary. Duties described as supervising and controlling work, manages the essential function of "buying," looking for new products, and negotiating prices are of little probative value in light of the fact that the record contains no evidence that the U. S. petitioner had any subordinate sales staff at any time during the period of time initially approved on petition. The use of the position title of "president" is not persuasive.

Although asserted by the petitioner, the record contains insufficient evidence to demonstrate that the beneficiary has been or will be employed in a managerial or executive capacity. The record indicates that a preponderance of the beneficiary's duties have been and will be directly providing the services of the business and engaging in other non-qualifying activities. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary has been or will be managing the organization as claimed, or managing a department, subdivision, function, or component of the company. 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 furnished, it cannot be found that the beneficiary will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that the United States and foreign entities are still qualifying organizations. As the appeal will be dismissed on the grounds discussed, 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.