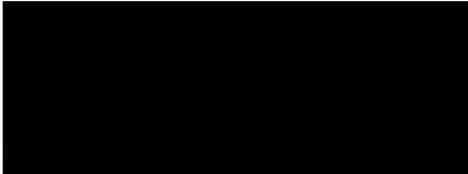


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Department of Homeland Security  
Citizenship and Immigration Services

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



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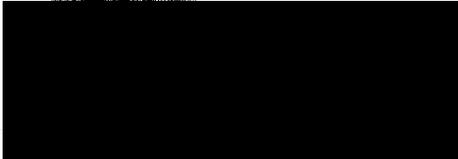
File: EAC-02-002-54672 Office: Vermont Service Center Date:

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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

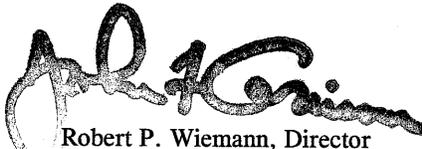
INSTRUCTIONS:

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 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 is involved in the import and sale of diamonds. It seeks authorization to employ the beneficiary temporarily in the United States as a department manager. The director determined that the petitioner had not demonstrated that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel argues that the evidence submitted shows that the proposed position meets the regulatory definition of executive or 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(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.

(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: however, the work in the United States need not be the same work which the alien performed abroad.

The United States petitioner was established in 1978 and states that it is an affiliate of Diamonds of David Aharanoff Co., located in Ramat Gan, Israel. The petitioner seeks to employ the beneficiary for a three-year period at an annual salary of \$50,000.

At issue in this proceeding is whether the beneficiary 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's vice-president, described the beneficiary's duties as follows:

Because of his many years of experience, high level of responsibility and expertise in the diamond industry, we have decided that [the beneficiary] is the perfect individual to establish, manage and guide our new marketing and sales department in the U.S. Although we have many customers and clients, many of whom are prominent and whom we have listed, we believe that there is room for expansion and growth. Therefore, [the beneficiary] will hire Regional Sales Managers and Field Sales Representatives who themselves will be professional workers, [who will] manage the various territories that we have established. [The beneficiary] will have sole responsibility for planning, development, policy making, and hiring personnel in his department. He will have primary responsibility after consultation with the undersigned for pricing and contractual credit terms.

The petitioner submitted an organizational chart indicating that the United States company had two employees: a vice-president, to whom the beneficiary would report as department manager, and a sales representative.

In response to the Bureau's request for additional evidence, the petitioner's "chief executive" states, in pertinent part, that:

As indicated on the attached chart, [the beneficiary's] proposed position will be directly under the direction of [named individual], the chief executive officer in the United States. [The beneficiary] will expand the sales department to properly service our existing customers who can no longer all be properly serviced by the existing sales representative, [named individual]. In fact, it is contemplated that [the beneficiary] will be hiring, in

[sic] his sole discretion, additional sales representatives to service areas in the United States by region. As previously described, there will initially be four regions for which we will hire three more representatives as we evolve and make our company grow even more. The entire department will be managed and directed by [the beneficiary], who will set management, sales, and delivery procedures; hire sales representatives, as well as any other staff that may be required.

As sales continue to grow, we expect to hire additional representatives who will be supervised, directed, assigned and managed by [the beneficiary]. Based upon their level of experience and familiarity with the industry, some of our new representatives may have bachelor's degrees in business or marketing. All of them will be skilled in the diamond industry, being experts in the evaluation of diamonds of various cuts, sizes and used in the jewelry industry, based on a fluctuating market and demand.

On appeal, counsel states that the director's conclusions were incorrect and asserts that the beneficiary is employed in a managerial or executive capacity. Counsel asserts that all the beneficiary need do to qualify is to manage the sales department. Counsel states that the description of the beneficiary's duties, submitted by the petitioner, is clear and specific.

Duties described as having responsibility for planning, development, policy making, and hiring personnel in his department, do not persuasively demonstrate that the beneficiary will be employed in a primarily managerial or executive capacity. The description of the duties that was provided is too general and vague to convey any understanding of exactly what the beneficiary will be doing on a daily basis. It must be evident from the documentation submitted that the beneficiary's actual daily activities will be primarily managerial or executive in nature. The petitioner has provided no comprehensive description of the beneficiary's duties to establish this. The record does not clearly reflect that the beneficiary will not be primarily involved in performing the day-to-day functions of the petitioning entity.

Further, it is evident that the beneficiary will not be managing a subordinate staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing nonqualifying duties at any time in the near future. It is noted that the petitioner has been in business since 1978 and yet has only two employees as of the filing date of the petition.

Based on the evidence furnished, it cannot be found that the beneficiary has been or 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's description of the stock distribution of the companies is not corroborated by any documentary evidence and therefore does not establish that a qualifying relationship exists between the United States and the foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). Simply going on record without supporting documentary evidence 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). In addition, although not explicitly addressed in the decision, the record contains no documentation to persuade the Service that the beneficiary has been employed for at least one continuous year abroad within the three years preceding his admission as a nonimmigrant. 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.