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Department of Homeland Security

Citizenship and Immigration Services

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**D7**

ADMINISTRATIVE APPEALS OFFICE  
CIS, A-10, 20 Mass, 3/F  
425 Eye Street N.W.  
Washington, D.C. 20536



SEP 22 2003

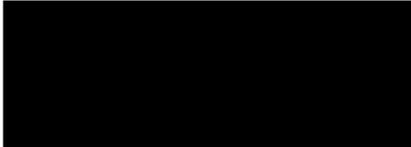
File: EAC-01-281-52679 Office: Vermont Service Center Date:

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:



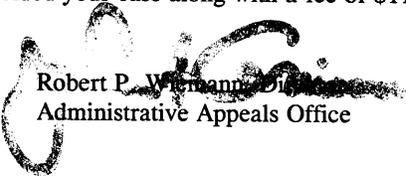
**INSTRUCTIONS:**

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 the 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. Wisniewski  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner engages in the manufacturing and sale of jewelry. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. It claims one employee and gross annual sales of \$96,000. The 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 argues that the beneficiary has been and will be employed in an executive or managerial capacity.

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.

The issue in this proceeding is whether the beneficiary has been and 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.

In a letter provided in support of the petition, the beneficiary's proposed duties were described as follows:

[The beneficiary's] duties as a President have been and will continue to be as follows: Supervise, oversee, and manage the entire day-to-day activities of the entire company which is engaged in the manufacture, design and sale of fine jewelry, Direct the overall operations of jewelry production, manufacture, and running of showroom and store. Oversees the final hiring, firing, and employment of all employees in all departments. Approval of company budget as set by accountant and approval of all funding. Review of all private sales and contracts with individual clients for special jewels and jewelry designs. Set company and [sic] goals with respect to sales, design and manufacture of fine jewelry.

In response to a Bureau request for additional evidence, the beneficiary's duties were further described in a chart reflecting the beneficiary's weekly activities as follows:

|  |              |
|--|--------------|
| Producing, creating, custom making week;         | 28 hours per |
| Designing week;                                  | 4 hours per  |
| Banking, mailing, correspondence week;           | 5 hours per  |
| Selling retail, visiting retail customers, week. | 6 hours per  |
| Visiting shops and wholesale customers week.     | 14 hours per |

On appeal, counsel submitted the following description of the beneficiary's duties:

[The beneficiary] is the president and sole stockholder of the company and he is the sole officer of the company. It is he alone that sets policies, establishes goals, manages the organization and he alone has discretion over day-to-day operations. These are his duties as the sole owner and president of the company and despite the size of the company these are executive/managerial in nature, and it is our position on Appeal that the size of the company and the number of employees is not determination [sic].

On review, the evidence is not persuasive that the beneficiary's employment involves executive or managerial responsibilities. In this case, it is stated that the beneficiary is the president of the U.S. entity. However, the description of the duties does not establish that his daily activities would be primarily managerial or executive as defined at section 101(a)(44)(A) or (B) of the Act.

The petitioner has not persuasively shown that designing, creating and producing jewelry is a managerial or executive activity or that visiting customers and selling retail constitute managerial or executive responsibilities. The evidence of record is not sufficient in demonstrating that the beneficiary will not be primarily involved in performing the day to day functions of the petitioning company. The petitioner has not established that the beneficiary would be functioning at a senior level within an organizational hierarchy, other than in position title. The record indicates that, in addition to the beneficiary, there is one other employee. However, the petitioner has provided no comprehensive

description of that individual's duties. The petitioner's evidence is not persuasive in establishing that the beneficiary would be managing a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing nonqualifying duties.

Based on the evidence presented, it is concluded that the petitioner has not established 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, it has not been demonstrated that a qualifying relationship still exists between the U.S. and foreign entities. As the petition 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.