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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



SEP 24 2003

File: LIN 02 133 50597 Office: NEBRASKA 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)

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, Nebraska Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner designs, develops and distributes software products and turnkey solutions for the marine industry. It seeks to employ the beneficiary temporarily in the United States as a project manager. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a managerial or executive capacity.

On appeal, counsel states that the director improperly denied the petitioner's visa petition on behalf of the beneficiary. Counsel further states that the beneficiary presently manages an essential function for the petitioner's foreign subsidiary in Russia as a Simulation Project Manager. Counsel argues that the position filled by the beneficiary abroad is a key component in the success of ZOA Transis Software House's research and development unit. Counsel further states that the beneficiary's current employment as well as his prospective position in the United States meet the criteria set forth in the appropriate regulations.

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 regulations at 8 C.F.R. § 214.2(l)(1)(ii), in part, state:

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 issue to be addressed in this proceeding is whether the petitioner has established that 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:

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

iii. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner describes the beneficiary's job duties abroad as those of a simulation project manager. The duties of the position abroad are described as follows:

Mr. [REDACTED] began his employment with our Russian affiliate, [REDACTED] in 1994 as a Programmer for the Navi Trainer Professional, a marine simulator software program. Due to his demonstrated expertise in dedicated software interface modules based on microprocessor controllers, he was quickly promoted to the position of Systems Integrator Specialist. He has subsequently been granted the title of Simulation Project Manager, the position that he presently holds.

As a Simulation Project Manager, Mr. [REDACTED] manages multiple concurrent major simulation software implementation projects and is therefore granted a wide latitude of discretionary decision making authority. He is responsible for making various strategic decisions and supervises and controls the work of other professional subordinate employees. Specifically, Mr. [REDACTED] oversees installations of the full range of Transas Marine simulators, from navigation and engineering modules to liquid cargo and communications. From Russia, he supports simulation projects worldwide related to installation and ongoing technical issues. He leads technical investigations into solutions to meet specific customer requirements, including proposal developments, research into new software and hardware for Transas simulators, and test procedures. He identifies clients' needs, manages the customization of the simulator software configuration accordingly, and oversees its continuing adjustment to fit changing training needs. Mr. [REDACTED] who has acquired extensive knowledge of Transis' proprietary simulators and simulator software, is considered a specialist in the field of Marine Simulation and is one of Transas' most experienced Project Managers.

It is noted that the beneficiary could not have begun work for [REDACTED] in 1994 as that entity was not formed by [REDACTED] until January 1997. Also, the record indicates that the beneficiary was employed by [REDACTED] as **Product Manager** in 2001. (Emphasis supplied.)

The record indicates that the beneficiary did not directly supervise any subordinate employees abroad, although he often managed project assistants. The record also reflects that the beneficiary is one of four project managers who work in non-supervisory roles in the [REDACTED] project management and installation group.

It is determined that record contains insufficient evidence to demonstrate that the beneficiary has been acting in a managerial or executive capacity abroad. The Service is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title. Although counsel indicates that the beneficiary manages an essential function in his position abroad, insufficient evidence is submitted to support that contention.

The petitioner describes the beneficiary's prospective job duties in the United States as:

He will oversee the design, installation, and maintenance of [REDACTED] simulators at several large marine navigation schools, including Texas A&M University and Delgado Communication College in New Orleans. He will manage the enhancement and customization of a [REDACTED] Navi-Trainer Professional 3000 full mission ship simulator system with integrated communications simulation capabilities at Texas A&M, identifying its unique properties and assigning specific software integration and design tasks to subordinate employees. He will identify the schools' changing needs, manage the customization of the simulator software accordingly, and oversee continuing adjustments to fit new and emerging training requirements.

The record indicates that the beneficiary would prepare initial sales and training proposals, coordinate the research and development of client-appropriate simulator components by the R&D Unit, and test the resulting scenarios to ensure optimum functionality. He would direct local area network installation by two subordinate services engineers, coordinate the installation of the proper computer operating systems, lead the configuration of all drivers and protocols and install and configure the necessary Transas software. On appeal, counsel forwards evidence showing that one of the two subordinate employees holds a bachelor of science degree in electrical engineering from the State University of New York at Buffalo.

Counsel's assertions concerning the managerial and executive nature of the beneficiary's future duties are not persuasive. The petitioner's descriptions of the beneficiary's proposed job duties are not sufficient to warrant a finding of managerial or executive job duties. Even considering that the beneficiary would be overseeing the work of two individuals, the petitioner has not shown that these personnel would relieve him from performing non-qualifying duties. The beneficiary would be an individual performing necessary tasks for the ongoing operation of the company, rather than primarily directing or managing those functions through the work of others. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the record is not persuasive and does not contain sufficient documentation to establish that a qualifying relationship exists between the petitioner and a foreign firm, corporation or other legal entity. As the appeal will be dismissed on the grounds discussed, these issues 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.