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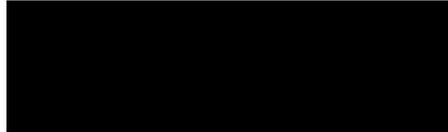
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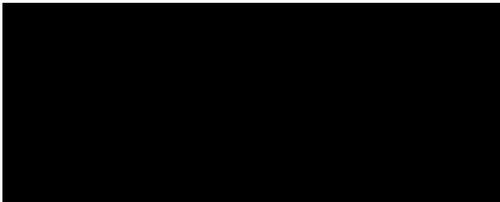
File: WAC 02 202 50441 Office: CALIFORNIA SERVICE CENTER Date: **APR 08 2004**

ON 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:



This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a new business that operates dance and specialty talent training. It seeks to employ the beneficiary temporarily in the United States as its president and general manager for a period of one year. 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 erroneously concluded that the beneficiary would not be employed in an executive or managerial capacity.

The petitioner, a California corporation, was established on December 12, 2001. The petition was filed on June 6, 2002. The petitioner requests an L-1A nonimmigrant visa for the beneficiary so she may supervise and control the operations of the new office in California.

The petitioner qualifies under the new office definition in 8 C.F.R. § 214.2(l)(1)(ii) that states in pertinent part that:

(F) *New office* means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

The issue in this proceeding is whether the petitioner has provided sufficient evidence to comply with the requirements set forth in 8 C.F.R. § 214.2(l)(3)(v).

The regulations at 8 C.F.R. § 214.2(l)(3)(v) state that if a 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 (l)(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.

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:

"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 written in behalf of the petitioner, the beneficiary describes her job duties abroad as a CEO/Partner as follows:

Since 1995, Ms. Steinlein has been employed in the capacity of CEO/Partner of Tranzstudio Steinlein (Steinlein Dance Studios) in Germany. Ms. Steinlein ran two of our studios; Lauf, Neumarkt. She has over 10 years of dance training and instruction and has served as a choreographer of Club Med and has been a certified Dance Instruction Trainer by the German Dance Jury since 1996. Iris was chosen as she is the most qualified executive and has the strongest language skills of all three directors of our foreign business.

In her temporary absence the foreign entity will continue to flourish under the direction of partners Erika and Sylvia Steinlein. During her planned departure to the US entity the beneficiary will be in close contact with her partners abroad as the businesses are interest related and she will be consulted to (sic) any problems that arise for both entities during said transfer.

Ms Steinlein has been employed with our company Tanzstudio Steinlein (Steinlein Dance Studios) in Germany as our Chief Executive Officer since its introduction in 1995. She is responsible for the overall control and direction of the German business in many respects. She has been responsible for hiring/firing of staff and organizing the necessary training programs in the aforesaid areas and seeing to it that her policies and business ideas were carried out by staff through the managers and other responsible staff in the business. Ms. Steinlein, as a Director of our German business, was involved in all major financial and business decisions and actions of the executive(s) of the company. She is therefore highly knowledgeable and competent in the dance world and specifically in the training, instruction, and Business Operation areas as well as all or our financial matters.

On June 6, 2002, when the petition was filed, the record shows that Tanzstudio Steinlein in Germany was owned by three persons equally and that they all served as directors of the organization. The organizational chart furnished for the record shows that the vice president/marketing manager was supervised by Erika Steinlein, one of the three directors. The vice president/marketing manager supervised a general manager/senior instructor who supervised three dance teachers, two specialty teachers, a maintenance employee and a bartending team/event crew. The record indicates that all three directors shared the supervisory responsibilities for the staff of the foreign entity. The record does not clearly show that the foreign entity had sufficient staff to relieve the beneficiary from performing non-qualifying duties. Without more compelling evidence, the record does not establish that a majority of the beneficiary's duties abroad were primarily directing the management of the organization, and that she was not directly providing the services of the business. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Consequently, the petition may not be approved.

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

Will be executive in charge of starting up US Operations. Will actively recruit and train top personnel and managers to run the Dance Talent Workshop, will seek out Dance Studios to rent for the classes. Will implement the same policy and procedures as the foreign dance studio in order to maintain the highest quality dance training and reputation in the industry. Will seek advancement opportunities with other schools worldwide and act as a liaison between the two schools to bring the highest quality students.

The petitioner explains that the company intends to hire three to five instructors as well as an office assistant to take care of the day to day duties which will allow the beneficiary to work with the instructors and managers of the business. The petitioner projects sales for 2002 to be in excess of \$100,000.

The description of the beneficiary's future job duties is insufficient to warrant a finding that the beneficiary will be employed in a primarily managerial or executive capacity. It appears, at most, the beneficiary will be performing operational rather than managerial duties. Even considering the petitioner's plan to hire three to five instructors and an office assistant, the petitioner has not provided evidence that the beneficiary will be primarily engaged in managing a subordinate staff of professional, managerial or supervisory personnel who will relieve her from performing non-qualifying duties. It appears that the beneficiary is the individual who will be performing the necessary tasks for the ongoing operation of the company, rather than primarily directing or managing those functions through the work of others. Consequently, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity. *Matter of Church Scientology International, supra*, at 604. For this additional 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.