

**PUBLIC COPY**

D7



U.S. Citizenship  
and Immigration  
Services

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



FILE: SRC 01 071 50670 Office: TEXAS SERVICE CENTER Date: **APR 12 2004**

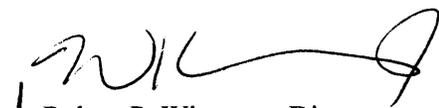
IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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: Self-represented

**INSTRUCTIONS:**

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 Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a used car dealership that is also engaged in the import and export of automobiles. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, the petitioner asserts that it is a small company that needs the beneficiary in order to prosper and grow.

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.

The U.S. petitioner states that it was established in 1997 and claims to have some form of affiliation with a company located in Hungary. Although the record of proceedings is vague, it appears that the foreign company is called "Bajna." The initial petition was approved and was valid from March 1999 to March 2001. The petitioner seeks to extend the petition's validity and the beneficiary's stay for one year at a salary of \$750 per week.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed primarily in a managerial or executive capacity.

Section 101(a)(44)(A) of the Immigration and Nationality Act ("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
- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In the initial petition to extend the beneficiary's stay the petitioner did not provide a description of the beneficiary's past or proposed job duties. Consequently, the director issued a request for additional evidence on March 6, 2001. The petitioner was asked to provide a copy of its organizational chart naming all of its employees and specifying the beneficiary's position within the organizational hierarchy. The petitioner was also asked to provide the names and position titles of employees whom the beneficiary supervises.

The petitioner's response included the following list of the beneficiary's duties:

- Directing the management of the organization;
- Establishing long term goals and policies (business planning);
- Day to day discretionary decision making;
- Reporting to the board of directors;
- Hiring, firing, and supervising staff and contracting with and directing subcontractors (including professionals such as: lawyers, insurance consultants, accountants, and advertising agencies) [sic];
- Recruiting and training employees (including the establishment of personnel policies and institution of benefit programs such as: health insurance, workers compensation, and pension plans);
- Locating, negotiating, and procuring contractual relationships;

- Inventory management (developing systems for checks of sales and purchases);
- Establishing relations with customers and the public in general;
- Developing marketing and advertising strategies;
- Legal matters;
- Creation of systems and budgeting controls;
- Securing banking and other financial services;
- Accounting, budgeting and analyzing business reports;
- Conducting marketing and profitability studies to promote and to direct corporate expansion.

Although the petitioner indicated that the beneficiary “is running the company with his daughter’s help,” it did not specify whether the beneficiary’s daughter is actually employed by the company or whether there are any other employees. The petitioner failed to provide CIS with the requested chart mapping out its organizational hierarchy.

The director denied the petition noting that the petitioner failed to submit sufficient evidence to establish that the beneficiary has been and would be performing primarily managerial or executive duties.

On appeal, the petitioner states that its first three years were a “learning period” during which the beneficiary spent most of his time doing market research and “partnership building.” Although the AAO acknowledges the petitioner’s struggle in creating a new business and ensuring its continued development, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the petitioner only one year from the date of approval in which to support a manager or executive. There is no statute or regulation that allows for an extension of this one-year period. In the instant case, the petitioner admits that it has taken it three years to even consider the next stage of development. Therefore, by the petitioner’s own admission, the petitioner had not attained the stage of development at the end of its first year that would require or sustain a primarily managerial or executive position. Moreover, the petitioner states on appeal that its only employees at this time are the beneficiary, and possibly, his daughter. This leads the AAO to question who is performing the petitioner’s day-to-day operational duties that are neither managerial or executive.

Although the petitioner foresees the hire of additional employees as the company grows to the next level of development, eligibility must be established at the time of filing. *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (Reg. Comm. 1978). In the instant case, the petitioner has not hired a sufficient staff such that would allow the beneficiary to focus on primarily managerial or executive duties. As such, the beneficiary’s main duties have consisted of performing market research and soliciting business for the company. It is noted that 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).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The fact that an individual owns and manages a small business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. The AAO does not doubt the beneficiary's high degree of discretionary authority, particularly in light of his ownership of the petitioning entity. However, the petitioner has not demonstrated that the beneficiary will be relieved from performing non-qualifying duties. Nor has the petitioner demonstrated that it has reached a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis. The record indicates that the beneficiary performs, rather than managers through others, much of the work of the car dealership. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the record does not contain sufficient evidence of a qualifying relationship. Although the petitioner submitted a stock certificate to establish its ownership and control, it did not indicate in the petition what type of qualifying relationship it claims to have with the foreign entity. However, as this appeal will be dismissed on other grounds, this issue need not be addressed 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.