



U.S. Citizenship  
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Services

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[Redacted]

APR 19 2004  
Date:

FILE: EAC 02 178 50681 Office: VERMONT SERVICE CENTER

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:

[Redacted]

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, Vermont 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 Russian airline. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its executive accountant. The director determined that the petitioner had not established that the beneficiary has been and would be employed in a primarily managerial or executive capacity. On appeal, counsel disputes the director's findings and submits a statement in support of the appeal.

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.

At issue in this proceeding is whether the petitioner has established that the beneficiary 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 support of the petition, the petitioner provided the following description of the beneficiary's job duties:

[The beneficiary] supervises all accounting operations of [the petitioner] in the Chicago, Illinois area. [Her] duties include supervision of entry of all [of the petitioner's] payments; issuance of all payroll checks; overseeing revenue accounting, sales control, balance sheets, monthly financial reports for the main office in Moscow, and other administrative management duties.

Moreover, on January 1, 2000 [the petitioner] implemented new financial accounting standards, which include a new specific financial computer program (Russian version) for representation abroad. Since [the beneficiary] was already trained and experienced in this specific program in Moscow and is trained in the new financial and accounting standards she was able to operate and help implement the program at [the petitioner's] office in Chicago. Currently, [the beneficiary] continues helping to maintain and run the above-referenced computer program at [the petitioner's] Chicago office . . . .

On June 17, 2002, CIS issued a request for additional evidence. The petitioner was asked to provide a detailed description and hourly breakdown of the beneficiary's daily job duties. The petitioner was also asked to identify and provide job descriptions for the employees in the beneficiary's department. In response, counsel submits a statement in which she claims that the petitioner voluntarily submitted the above information with the original petition.

The petitioner did initially provide CIS with a description of the beneficiary's duties in the United States. CIS clarified, by requesting additional evidence, that the original description was insufficient. The additional information was to consist of a more detailed job description than the one previously provided. The petitioner was also asked to provide hourly breakdowns of the beneficiary's specific duties. Thus, the petitioner was not asked to provide any information that had already been submitted. However, due to counsel's interpretation of CIS's request, the petitioner failed to submit a more detailed, hourly breakdown of the beneficiary's duties. Although the petitioner complied with CIS's request for the W-2 tax statements of employees in the beneficiary's department, the petitioner failed to provide the names, position titles, and position descriptions of these individuals. It is noted that failure to submit requested evidence, which precludes a material line of inquiry, as the petitioner did in the instant case, shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The petitioner then proceeded to submit a copy of the petition and all of the supporting evidence in its entirety, despite CIS's request that the petitioner refrain from resubmitting previously submitted documents unless specifically requested to do so.

The director denied the petition noting the petitioner's failure to comply with the request for additional evidence. The director concluded that the petitioner did not submit sufficient evidence to establish that the beneficiary's duties will be primarily managerial or executive.

On appeal counsel submits a brief in which he provides the AAO with a list of the beneficiary's job duties for the petitioning entity. However, where a petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, the AAO may disregard that evidence when submitted on appeal. The AAO will then adjudicate the appeal based on the record of proceedings before the director. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). If the petitioner desires further consideration of the newly submitted evidence, it may file a new petition. As the petitioner in the instant case failed to submit a detailed breakdown of the beneficiary's duties in response to CIS's request for evidence, the portion of the appellate brief that addresses this issue will not be considered.

Although counsel provides the position titles of the beneficiary's subordinates, she does not provide any information about the job duties of any of these individuals. Without this information, which was also a part of CIS's previous request for additional evidence, the AAO cannot determine whether the beneficiary's subordinates are professional, supervisory, or managerial. *See* 8 U.S.C. § 1101(a)(44)(A)(ii). Despite counsel's claim that the beneficiary has the authority to make decisions in regard to the petitioner's financial operation, the petitioner still has the burden of establishing that the beneficiary's duties are primarily managerial or executive. In the instant case, the petitioner failed to provide a specific description of the beneficiary's duties as previously requested. Therefore, the AAO cannot affirmatively conclude that the nature of the beneficiary's job duties is either managerial or executive, regardless of counsel's assertions. 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). While counsel provides a lengthy list of the beneficiary's career accomplishments with the petitioning organization, the most relevant information in the instant case is the beneficiary's specific job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Counsel failed to respond to CIS's request for this crucial information.

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 list of duties initially provided was too vague to convey a true understanding of what the beneficiary has been and will be doing on a daily basis. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. Nor does the record contain evidence which would indicate that the beneficiary has been and will be relieved from performing non-qualifying duties. The petitioner has not demonstrated that the beneficiary primarily manages an essential function of the organization or that she operates at a senior level within an organizational hierarchy. 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.

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.