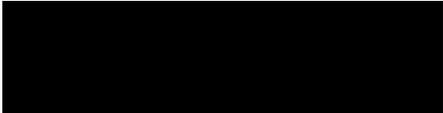


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

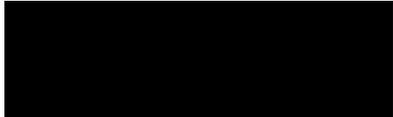


U.S. Citizenship
and Immigration
Services



FILE: EAC 02 024 53000 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



MAR 22 2004

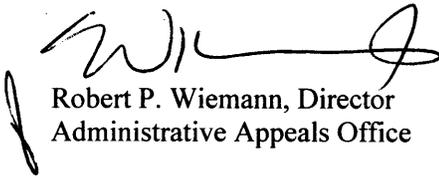
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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

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prevent clearly unwarranted
invasion of personal privacy**

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 engaged in the purchase, sale, and export of window treatments. 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 has been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel refutes the director's findings and submits an appellate brief in support of his assertions.

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 1996 and that it is an affiliate of Nite Ltd. Plus, doing business as New Line 2000, located in Moscow, Russia. The initial petition was approved and was valid from October 1998 to October 2001. The petitioner seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of \$28,600.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and will continue to be employed by the U.S. petitioner 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] is responsible for developing marketing strategies for determining the suitability for purchase and sale of additional home improvement product lines appropriate to the former USSR market. She has authority to determine which new product lines to develop and with which suppliers to contract. She plans, organizes, directs, and controls all resources invested in [the petitioner]; develops short and long range management plans; and acts as a liaison between Russian clients and American vendors. [The beneficiary] determines pricing strategies, supervises product and inventory planning, and negotiates professional service contracts. [She] has complete financial management responsibilities for the company. . . .

The petitioner also stated that the beneficiary supervises the petitioner's three employees, including the vice president, a logistics clerk, and an accounts clerk. The petitioner stated that the beneficiary is in charge of employee hiring, training, performance reviews, setting employees' salaries, and supervising and reviewing their work.

On November 26, 2001, CIS issued a request for additional evidence. The petitioner was asked to provide a comprehensive description of the beneficiary's job duties, including an hourly breakdown of time spent performing those duties, and a similar breakdown for the beneficiary's subordinates.

The petitioner responded with a job description almost identical to the one submitted earlier in support of the petition. The petitioner also provided the following percentage breakdown of the beneficiary's duties:

[The beneficiary] spends approximately thirty percent of her time in managerial, strategy, and planning meetings such as conference calls with representatives in the former USSR, clients who are interested in new products, and U.S. vendors negotiating new prices and

new product programs. [B]y managing the essential function within [the petitioning organization] of a growing company's business and by exercising direction [sic] over the day-to-day operations of this activity. Approximately twenty percent of [the beneficiary's] time is spent in the financial management of [the petitioner] in the form of financial analysis, cost management, and budget planning, including controlling accounts receivable and accounts payable, analyzing the purchase power of each new product, removing less profitable items from the market, and establishing room for new products and new designs. . . . Ten percent of her time is spent on reviewing shipping schedules and documents, reviewing urgent orders, and troubleshooting custom clearance issues. [The beneficiary] functions in a managerial and executive capacity with respect to these duties by exercising direction [sic] over the day-to-day operations of this activity. [The beneficiary] spends the remaining forty percent of her time supervising and planning the work of the company to ensure the smoothness and consistency of its operations, as well as its continued growth.

The director denied the petition noting that the petitioner has failed to show that it requires the services of an individual in a primarily managerial or executive capacity and concluded that the beneficiary would not be employed in a qualifying capacity.

On appeal, counsel states that the beneficiary's main task is to determine the petitioner's product line, which he asserts is an essential function. Counsel also refers to the petitioner's statement in support of the petition in which it was claimed that the beneficiary is responsible for developing marketing strategies to help her determine which product lines are most suitable for purchase and sale in the targeted foreign market.

Although counsel clearly illustrates the high degree of discretionary authority possessed by the beneficiary, the petitioner must also establish that the beneficiary's tasks are primarily managerial or executive in nature and that she is relieved of having to perform the day-to-day tasks involved in running the petitioning entity. In an effort to guide the petitioner in providing the necessary evidence, the director issued a request for additional evidence. However, the list of duties submitted in response to the request was vague and failed to establish what the beneficiary has been and would be doing on a daily basis.

The petitioner stated that the beneficiary spends 30% of her time in "managerial, strategy, and planning meetings," during which she talks to clients and vendors about selling the petitioner's products and the purchase of new inventory. While these duties are clearly essential for the petitioner's business, they are the duties of a sales person and cannot be deemed managerial or executive. The petitioner also indicated that 10% of the beneficiary's time is devoted to reviewing shipping documents, urgent orders, and dealing with customs clearance issues. Again, while these tasks are necessary for the petitioner's daily operation, they cannot be attributed to a manager or executive as those terms are defined in the Act. Finally, while the petitioner stated that 40% of the beneficiary's time has been devoted to "supervising and planning the work of the company," there is no explanation as to what the beneficiary actually does in executing these duties. The petitioner further states that the beneficiary's duties include the supervision of three subordinate employees. However, two of those employees, namely the logistics clerk and the accounts clerk, cannot be deemed professional. Pursuant to section 101(a)(32) of the Act the term "profession" includes, but is not limited to architects, engineers, lawyers, physicians, surgeons, and teacher of elementary or secondary schools, colleges, academies, or seminaries. Pursuant to 8 C.F.R. § 204.5(k)(2), the term "profession" includes not only one of the occupations listed in section 101(a)(32) of the Act, but also any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum

requirement for entry into the occupation. In the instant case, the petitioner indicated that the accounts clerk has only an associate degree, which is not equivalent to a baccalaureate degree. The AAO cannot conclude that the beneficiary manages professional employees.

After reviewing the petitioner's percentage breakdown of the beneficiary's duties, it appears that at least 90% of the beneficiary's time has been and would continue to be devoted to duties that cannot be deemed managerial or executive, no matter how essential they may be to the overall success of the petitioning entity. 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).

Counsel repeatedly stresses in the appellate brief that the beneficiary manages the petitioner's essential functions and runs the overall organization. However, 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). Furthermore, the description of the beneficiary's duties as provided by the petitioner suggests that the beneficiary's responsibilities are not limited to management of the essential functions. Rather, the beneficiary is directly involved in performing the essential functions she manages. While the petitioner's reasonable needs may be such that the beneficiary is required to be directly involved in running its daily operations, that fact suggests that the petitioner has no need for a primarily managerial or executive position.

The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel, or that she will be relieved of having to perform non-qualifying duties. Nor does the record establish that the beneficiary will be primarily managing, rather than performing, an essential function within the organization. Based on the evidence submitted, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity.

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.