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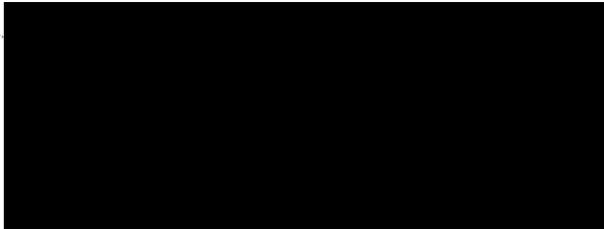
U.S. Department of Homeland Security
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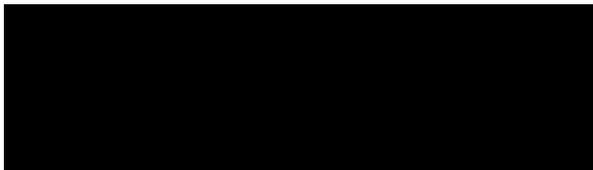
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ON RE: Petitioner:
Beneficiary:

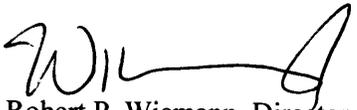


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is engaged in sports programming, athlete representation and event management. It seeks to employ the beneficiary temporarily in the United States as its "Manager, Athletic & Corporate Representative." The director noted that the petitioner had submitted a copy of a lease agreement for the United States entity that was valid for six months while its request for the services of the beneficiary was for a period of three years. The director then determined that the petitioner had not shown that sufficient physical premises to house the new office have been secured. The director also determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, the petitioner explains that the company had secured a temporary office space within Utah for the period of the Olympics, and that a copy of that lease was with the petition. Counsel explains that after the Olympics, the beneficiary would be moving to her team office in Mission Viejo, California. Counsel submits a letter dated January 11, 2002 from the petitioner's vice president explaining the corporation's office space plan through July, 2004. Counsel states that the beneficiary is an international manager as one who manages a critical function within the organization, having overall responsibility for North American marketing operations and business promotion. Counsel further states that the company has the ability to support a manager and as it has now been in operation in the United States for more than one year, it is no longer a "new office."

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 regulations at 8 C.F.R. § 214.2(l)(3) state that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

The petitioner, a Delaware corporation, was established on October 25, 2000. The petition was filed on October 16, 2001. The United States entity qualifies under the new office definition at 8 C.F.R. § 214.2(l)(1)(ii) that states as follows:

(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.

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.

Based upon the evidence and information provided on appeal, it is determined that the petitioner has shown that it had secured sufficient physical premises to house the new office at the time the petition was filed.

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

The first issue in this proceeding is whether the petitioner has established that the beneficiary has been employed abroad for one continuous year within the three years preceding the filing of the petition in a primarily managerial or executive capacity by a qualifying organization.

The petitioner describes the beneficiary's job duties abroad as an international marketing director as follows:

Position Description

This position is a newly created senior management position. ESP has been strong in the conceptualization, production and logistics of mass consumer promotions in Australia. We have linked to partners such as News Ltd. to market these promotions within this market. With the expansion of our operations within the Olympic movement, and other major sporting leagues internationally, the primary objective of this position is to successfully launch and implement "ESP promotions" internationally and introduce marketing expertise into our skill base.

The position requires the person to have a requisite skill and expertise in marketing and mass consumer sales promotions, plus a comprehensive knowledge and understanding of the newspaper industry.

This will enable us to offer a complete package to international & domestic media organizations in consulting, conceptualization, implementation, marketing and production of mass-market consumer promotions.

The record shows that the beneficiary was first employed by Elite Sports Properties Ltd. as its Promotions & Marketing Director and then as International Marketing & Promotions Director. The beneficiary's department abroad, Promotions/International, had five employees including the beneficiary. As division manager, she was the second in charge in this small department. The director determined, and the AAO agrees, that the record contains insufficient evidence to demonstrate that the beneficiary has been acting in a primarily 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. For this reason, the petition may not be approved.

The next issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity.

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

This position is a newly created senior management position. ESP have been strong in the conceptualization, production and logistics of mass consumer promotions in Australia. We have linked to partners such as News Ltd, to market these promotions within this market. The primary responsibility of the incumbent is to bring about a cultural change in our approach to promotions by introducing the marketing element in our promotional mix.

With the expansion of our operations with the Olympic movement, there is a need to appoint a person within the US who has the requisite skill and expertise in marketing an Olympic promotion through a newspaper medium. This will enable us to offer a complete consulting package to international & domestic news organizations in conceptualization, implementation, marketing and production of a mass market consumer promotions designed to increase circulation.

The International Marketing Director will be responsible for;

- a) Developing a set of marketing objectives for international news groups who we consult to, such as NA Corp. in America;
- b) Developing strategic solutions against established marketing objectives to ensure each newspaper and promotion is properly marketed within their territory;
- c) Overseeing all components of the marketing strategy and managing the staff responsible for production and logistics
- d) Preparing and ensuring compliance with marketing and production budgets;
- e) Identifying risk to revenue areas and implementing effecting strategies to minimize risk.
- f) Monitoring and, where necessary, acting upon a competitor's competitive marketing intelligence;
- g) Ensuring that staff within the division are properly trained and have the skills necessary to perform their role. Creation of succession management within the territory;
- h) Implementing new marketing strategies to keep abreast of international developments.

On appeal, the petitioner indicates the beneficiary will be responsible for establishing the strategic direction of the Promotions and Consulting Divisions of the company. The petitioner indicates that in that role, she will be managing two senior account managers and one production assistant.

Counsel's assertions concerning the managerial and executive nature of the beneficiary's future duties are not persuasive. The petitioner's description of the beneficiary's proposed job duties is not sufficient to warrant a finding of managerial or executive job duties. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec.533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 BIA 1980). 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).

The record reveals that at the time of filing the petition, the petitioner did not have sufficient staff to relieve the beneficiary from performing non-qualifying duties. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary will be managing or directing the management of a function, department, subdivision or component of the company upon her entry into the United States. The petitioner has not shown that the beneficiary will be functioning at a qualifying senior level within an organizational hierarchy.

In this case, the evidence submitted is insufficient to establish that the beneficiary will be acting in a managerial or executive capacity. The planned addition of new employees sometime after the beneficiary enters the United States does not enhance the beneficiary's eligibility for this classification at the time the petition was filed. Therefore, 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, this issue 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.