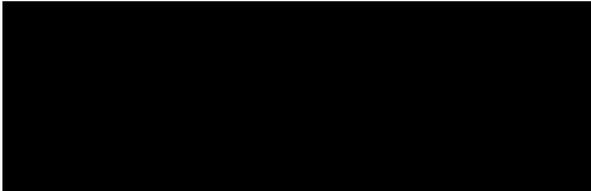


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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

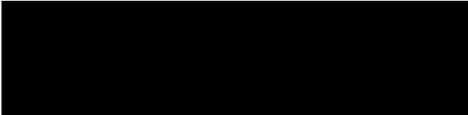


U.S. Citizenship
and Immigration
Services



FILE: EAC 03 110 53387 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



MAR 31 2004

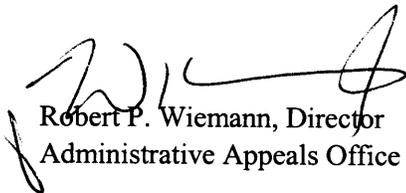
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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

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

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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 an importer and exporter of women's shoes and garments. It seeks 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, 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.

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

The U.S. petitioner states that it was established in June 2002 and that it is a subsidiary of Novedades Ninas, C.A., located in Venezuela. The petitioner seeks authorization to employ the beneficiary in the United States for an initial stay of one year at a salary of \$50,000 per year.

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 proposed job duties in the United States:

[The beneficiary] will direct and oversee the growth of the American Subsidiary and establish organizational goals and policies. He will have the authority to take such

personnel actions as hiring salespersons, office and warehouse staff and supervising them for optimum performance. He will direct budgeting and financial planning, negotiate major purchase and sales contracts, set inventory at an optimum level, and ensure increase in revenues through formulation of effective merchandising and sales policies. As President, [the beneficiary] will have the responsibility for [sic] developing and implementing a strategy for the American Subsidiary to increase its customer base, its recognition and reputation in the marketplace. [The beneficiary] will also be responsible for directing the day-to-day affairs of the company to ensure that operations run effectively and efficiently. He will supervise the in-flow and out-flow of inventory so that he is consistently keeping abreast of the quality, quantity, and general nature of the merchandise desired for purchase in the U.S. Further, as President, [the beneficiary] will be responsible for establishing operations and procedures for documenting and tracking incoming and outgoing shipments, keeping inventory current, and developing and maintaining a system for sales and purchase records control. He will arrange for and ensure the proper inspection of goods for delivery. He will negotiate agreements with major suppliers and wholesalers. Finally, [he] will ensure conformity with all regulations both foreign and domestic and also arrange for the employment of additional personnel.

The petitioner further stated that initially it anticipated hiring a shipping supervisor, a quality control supervisor, and a sales manager.

On March 28, 2003, CIS issued a request for additional evidence. The petitioner was asked to provide complete position descriptions for the beneficiary and the three proposed employees of the petitioning entity. The petitioner was also instructed to include an hourly breakdown of each employee's duties on a weekly basis.

The petitioner's response included the following hourly breakdown of the beneficiary's proposed duties:

[The beneficiary] will direct and oversee the growth of the American Subsidiary and establish organizational goals and policies. He will have the authority to take such personnel actions as hiring salespersons, office and warehouse staff and supervising them for optimum performance. He will direct budgeting and financial planning (10 hours per week), negotiate major purchase and sales contracts, set inventory at an optimum level, and ensure increase in revenues through formulation of effective merchandising and sales policies (10 hours per week). He will be responsible for policies relating to quality (2 hours per week), customer satisfaction (5 hours per week), and administration (13 hours per week). Administration will include negotiating with higher placed executives, supervising the shipping supervisor, quality control supervisor, and sales manager, one of whom has supervisory responsibilities. . . .

[The beneficiary] will have the responsibility for developing and implementing a strategy for the American Subsidiary to increase its customer base, its recognition and reputation in the marketplace. [He] will also responsible [sic] for directing the day-to-day affairs of the company to ensure that operations run effectively and efficiently. He will supervise the in-flow and out-flow of inventory so that he is consistently keeping abreast of the quality, quantity, and general nature of the merchandise desired for purchase in the U.S.

Further, as President, [the beneficiary] will be responsible for establishing operations and procedures for documenting and tracking incoming and outgoing shipments, keeping inventory current, and developing and maintaining a system for sales and purchase records control. He will arrange for and ensure the proper inspection of goods for delivery. He will negotiate agreements with major suppliers and wholesalers. Finally, [he] will ensure conformity with all regulations both foreign and domestic and also arrange for the employment of additional personnel.

Although the petitioner also provided brief position descriptions of the remaining three employees it proposed to hire, the hourly job descriptions that were requested by CIS were not provided.

The director denied the petition noting the petitioner's failure to provide an hourly breakdown of duties for the beneficiary's support staff. The director also stated that the petitioner's description of the beneficiary's duties is abstract and fails to convey his actual level of authority. The director ultimately concluded that the record does not demonstrate that the beneficiary will be employed in a managerial or executive capacity.

On appeal, counsel repeats the description of the beneficiary's duties and the hourly breakdown provided in response to CIS's prior request for additional evidence. Although counsel states that the petitioner has hired two sales people and will eventually hire a shipping supervisor, a quality control supervisor, and a sales manager, the description of the beneficiary's proposed duties fails to support the claim that the beneficiary will be employed in a qualifying capacity. The description of the beneficiary's proposed duties indicates that nearly 50 percent of his time will be spent providing customer service and supervising non-professional, non-supervisory subordinates despite what their position titles suggest. The petitioner also indicated that 10 hours of the beneficiary's time would be spent directing budgeting and financial planning. However, there is no clear indication as to what "directing budgeting and financial planning" actually means. Even though the director noted that the description of the beneficiary's proposed job was vague, counsel did not offer an additional, more specific job description.

On review, the record as presently constituted does not establish that a majority of the beneficiary's duties will be primarily directing the management of the organization or supervising a subordinate staff of professional, managerial, or supervisory personnel. Nor has the petitioner presented a business plan that would lead the AAO to conclude that the beneficiary will be relieved from performing non-qualifying duties within the allotted one year from the date of the petition's approval. The petitioner has not demonstrated that it will reach 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. 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 petitioner failed to submit sufficient evidence that the beneficiary's job duties abroad were of a qualifying nature. Nor has the petitioner established that it has a qualifying relationship with a foreign entity. Even though specifically requested to provide documentation to establish that the petitioner was funded by the foreign entity, the petitioner failed to provide this crucial evidence. However, as the appeal will be dismissed on other grounds, neither of these issues needs to be examined further.

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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.