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**U.S. Citizenship  
and Immigration  
Services**



*[Handwritten signature]*

FILE: LIN 02 292 51758 Office: NEBRASKA SERVICE CENTER Date: **OCT 01 2004**

IN 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:



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.

*[Handwritten signature]*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska 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 filed this nonimmigrant petition seeking to change the beneficiary's status from L-1B non-immigrant possessing specialized knowledge to that of an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). It also seeks to extend the employment of the beneficiary in his position as finance manager of the Chicago and Midwest region. The petitioner states that it is a branch of Turkish Airlines whose main office is located in Turkey. The petitioner now seeks to extend the beneficiary's stay for an additional three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has been and would be employed in the United States in a managerial or executive capacity.

On appeal, counsel disputes the director's findings and indicates his intention to submit a brief within 30 days of filing the appeal. To date, however, no additional evidence or information has been submitted. Therefore, the record will be considered complete as presently constituted.

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.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States.

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

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.

In support of the petition, the petitioner provided a list of the beneficiary's duties in the United States. As those duties have been restated by the director in the denial and will be considered in the present matter, the AAO need not repeat that list herein.

On October 28, 2002 the director issued a request for additional evidence instructing the petitioner to provide a description of the beneficiary's proposed employment in the United States. Specifically, the petitioner was

asked to discuss the beneficiary's level of authority, his specific job duties, and an indication as to the types of employees the beneficiary supervises. The petitioner was also asked to provide a copy of its organizational chart illustrating the petitioner's personnel structure.

In response to the director's request, counsel stated that the beneficiary "has full authority for all financial transactions," but indicated that the beneficiary has no subordinates and does not have the authority to hire or fire others. Counsel also stated that the beneficiary is responsible for cargo taxes, payroll, office-related expenses and income, airline industry-related taxes, and all financial transactions that take place in the main office in Turkey. In addition, the petitioner submitted another, more detailed job description, which was restated in its entirety in the director's denial. Although the given description will be considered in the instant proceeding, the AAO need not duplicate the director's efforts by repeating that description herein.

On March 18, 2003, the director denied the petition explaining that the record does not support the petitioner's claim that the beneficiary has been and would be performing in the capacity of a function manager. The director concluded that the beneficiary would be performing, rather than managing the petitioner's essential function.

On appeal, counsel asserts that the director erred in "choos[ing] to characterize the beneficiary as merely an accountant" and claims that the beneficiary is responsible for all of the petitioner's accounting and finances. Counsel further points out the beneficiary's 17-year tenure with the foreign entity and explains that the beneficiary does not supervise other employees because of personnel cutbacks. As properly inferred by counsel, the beneficiary does not have to manage personnel in order to fit the statutory definition of manager. However, regardless of whether the beneficiary manages people or a function, the fact remains that someone other than the beneficiary must be performing the petitioner's operational duties, no matter how essential they are and regardless of their professional nature.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. In this matter, the petitioner has submitted a number of descriptions of the beneficiary's duties. However, all of the descriptions similarly suggest that the beneficiary would be performing, rather than managing, an essential function. 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). Thus, no matter how crucial the beneficiary's accounting duties may be, the fact that the beneficiary performs these duties suggests that the beneficiary would be employed as a highly skilled and professional accountant, but not as a function manager. 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.

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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.