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File: LIN 05 039 51982 Office: NEBRASKA SERVICE CENTER Date: DEC 07 2006

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

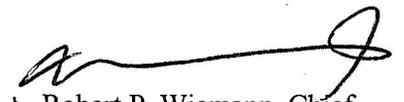
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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, Chief  
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 sustain the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as 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). The petitioner, a Utah limited liability company, operates a chain of retail skiing equipment stores in the United States, Canada and Europe. The petitioner states that it is the parent company of the beneficiary's foreign employer, Surefoot Sports SARL, located in Switzerland. The petitioner seeks to employ the beneficiary in the position of Manager of European Operations for a period of three years.

The director denied the petition concluding that the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner disputes the director's decision and asserts that the beneficiary will be rendering managerial services to the petitioner by directing and managing its overseas subsidiary. Counsel emphasizes that the beneficiary will continue to perform his current managerial duties for the foreign entity while in the United States, and that the beneficiary's entries to the United States to attend executive meetings would not preclude him from continuing to direct and control the organization's European operations. Counsel submits a brief in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states 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; however, the work in the United States need not be the same work which the alien performed abroad.

The issue in the present matter is whether the petitioner has established that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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 nonimmigrant petition was filed on November 24, 2004. The petitioner indicated on Form I-129 that the beneficiary will be employed in the position of Manager of European Operations. In a letter dated November 11, 2004, the petitioner indicated that the beneficiary has served in the offered position since the establishment of the foreign entity in October 2000, based in Switzerland. The petitioner described the beneficiary's role as follows:

[The beneficiary] has been very successful in establishing retail stores in Crans Montana, Verbier, Courchevel, and Oslo. He was responsible for all aspects of starting the operations of each of these stores, including hiring, training and supervising the managers of each store, overseeing inventory management, establishing goals for each store, and providing the management support for each store to achieve its goals. He has the authority to hire or fire personnel and exercise his discretion over the day-to-day operations of [the foreign entity].

[The beneficiary] directs and controls the work of the following managerial personnel:

Manager of the Crans Montana store, with four employees

Manager of the Verbier Store, with six employees.

Manager of the Courchevel store, with five employees.

Manager of the Oslo store, with three employees.

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[The petitioner] wishes [to] employ [the beneficiary] as Manager of European Operations at an annual salary of \$55,000 plus bonus of 5% of European division profit.

In his capacity of Manager of European Operations, [the beneficiary] will continue to manage all aspects of European Operations, including overseeing the management of the four stores in Europe. He will also continue to manage development of the European market and oversee our growth in Europe, which will include opening of additional stores. [The beneficiary] will continue to report directly to [the president of the petitioner], and will operate at a senior level within the organizational hierarchy. He will continue to have authority to hire and fire personnel, or make these as well as other personnel recommendations, and exercise discretion over the day-to-day operations of our European stores.

[The beneficiary] will maintain his residence abroad and will continue his managerial job duties abroad. We are seeking L-1A classification on behalf of [the beneficiary] so he may travel between the United States and Europe frequently to attend executive meetings and run training sessions.

The petitioner submitted an organizational chart showing that the corporate organization is structured into three division, a corporate division which includes finance, personnel, purchasing and information technology functions; a North American division which operates sixteen stores in the United States and Canada; and a European division, which operates four stores in Switzerland, France and Norway. The chart shows that the

position of Manager of European Operations reports directly to the U.S. company's president; however, the chart did not specifically identify the beneficiary.

The director issued a request for evidence on December 1, 2004. The director stated the following:

The Service acknowledges the beneficiary's duties performed abroad for [the foreign entity]. It appears that the beneficiary has satisfied the requirement of one year of qualifying employment in an executive/managerial capacity. However, the beneficiary's proposed employment in the United States remains unclear. . . . It appears that the beneficiary will primarily attend meetings and training sessions rather than perform duties in a managerial/executive capacity.

Accordingly, the director requested: (1) a complete, detailed position description of the duties to be performed by the beneficiary in the United States and the percentage of time to be devoted to each duty; (2) a statement regarding the anticipated frequency and duration of the beneficiary's visits to the United States; and (3) an explanation as to how the beneficiary will continue to manage the European operations while he is present in the United States. The director further requested a new organizational chart which identifies the beneficiary and the proffered position in related to other employees. The director outlined the statutory definitions for managerial and executive capacity, and requested evidence to establish that the beneficiary's U.S. position would meet the statutory criteria for one or the other capacity.

In a response dated December 28, 2004, the petitioner reiterated that the U.S. company filed the petition due to the beneficiary's need to travel to the United States frequently in his current role as manager of the company's European operations. The petitioner attempted to clarify the purpose of the transfer as follows:

[The beneficiary's] job duties in the United States will remain that [sic] same as those acknowledged by the Service to be executive/managerial in his qualifying employment abroad with [the foreign entity]. The purpose of his proposed trips to the United States in L-1A classification is to attend executive meetings and training sessions to further the goals of the international organization with regard to management of [the foreign entity] in Europe. . . [The beneficiary] will continue to be responsible for all aspects of European operations, including opening new stores. He will continue to hire, train and supervise the managers of each store and provide support to the management of each store so it may achieve its goals....

\* \* \*

Specifically, [the beneficiary] will supervise the managers of each of our European stores with regard to essential corporate policies and procedures that he has developed in coordination with other senior management of [the petitioner's] international organization. As we are a world leader in retail ski boot sales and service, the policies and procedures of the organization that are critical to our continued success pertain to procedures for handling customer service issues and fitting ski boots correctly. [The beneficiary] will continue to be

responsible for directing the management of each of our European stores with regarding to [the petitioner's] policies for customer service and boot fitting.

\* \* \*

His attendance at executive meetings and training sessions is essential for him to be able to develop corporate policies and procedures in person with senior [company] management in the United States. His presence in the United States is also essential to his performance of his job duties of managing European operations because training in handling customer service issues and proper boot fitting can only be done effectively in person. In order to effectively manage and train the European store managers, [the beneficiary] must personally meet with [company] personnel in the United States with regarding to customer service and boot fitting policies and procedures in order to communicate these . . . policies and procedures to European management.

The petitioner indicated that the beneficiary is expected to travel to the United States approximately six times per year, and noted that he "will continue to manage the European operations, in coordination with senior management in the United States, by corresponding with the European store managers via telephone and e-mail." The petitioner clarified that the U.S. company is requesting L-1A classification for the beneficiary's current position, as opposed to offering him a new position in the United States.

The petitioner submitted a new organizational chart that identifies the beneficiary as the manager of the company's European operations. The organizational chart was otherwise identical to that submitted with the initial petition.

The director denied the petition on January 7, 2005, concluding that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive position in the United States. The director again acknowledged that the beneficiary's employment abroad was in an executive or managerial capacity. The director noted, however, that the stated purpose of the beneficiary's trips to the United States, including attending meetings and training sessions, had not been shown to be involve primarily managerial or executive duties. Specifically, the director found "there is no indication that the beneficiary will otherwise manage or direct the management of a function, department, subdivision or component of the actual U.S. entity." The director noted that the organizational chart did not establish that the beneficiary "is part of the organizational structure of the U.S. entity." The director concluded that the beneficiary, while in the United States, will be primarily attending meetings and training sessions rather than actually performing duties in a managerial/executive capacity" as contemplated by the regulations.

On appeal, counsel disputes the director's determination that the evidence did not establish that the beneficiary manages a function, department, division or component "of the actual U.S. entity." Counsel asserts that despite the director's finding, the regulations do not specify that the beneficiary of an L-1A petition must manage or direct "the actual U.S. entity," but only require that the beneficiary "render managerial or executive services to a branch of the same employer or a parent, affiliate or subsidiary." Counsel contends that the documentation submitted establishes that the beneficiary will be rendering managerial services to the

petitioner in the United States by directing and managing its subsidiary under the direction and control of the U.S. petitioner.

Counsel further asserts that the director's statement that the beneficiary will not manage a function, department, subdivision or component of the U.S. entity is contradicted by the evidence which shows that the foreign entity operates as a subdivision of the petitioning company. Counsel states that, contrary to the director's conclusions, the beneficiary is part of the organizational structure of the U.S. entity in his position as the manager of its European division.

In addition, counsel emphasizes that the beneficiary will continue to direct and control the management of the foreign entity and will maintain his residence abroad. Counsel further asserts:

The purpose of his travel to the United States is [to] attend executive meetings and training sessions. His attendance at executive meeting[s] and training sessions does not preclude him from continuing to direct and control the management of [the foreign entity]. To the contrary. . . [h]is attendance at executive meetings and training sessions is essential to his continued success in directing the management of [the foreign entity], which includes managing the organization, supervising the work of managerial employees, hiring and firing employees, exercising discretion over the day-to-day operations, directing the management of the organization, establishing goals and policies, exercising wide latitude in discretionary decision-making and receiving supervision from the president of the organization.

\* \* \*

The record establishes that it is necessary for the beneficiary to be employed by [the petitioner] in the United States several times each year to be personally involved in developing the corporate policies and procedures of the worldwide . . . organization with regard to customer service and boot fitting, which are the foundation of the success of the international organization.

Upon review, counsel's assertions are persuasive. The petitioner has established that the beneficiary will be employed in a primarily managerial capacity. As acknowledged by the director, the beneficiary's position with the foreign entity has been demonstrated to be in a managerial capacity. The beneficiary currently manages a key subdivision or component of the petitioning company, namely its European subsidiary operations, has the authority to hire and fire personnel, supervises managerial or supervisory-level employees, and exercises discretion over the operation of four stores in three countries. The record establishes that the beneficiary, although employed by a subsidiary company, has managed and will continue to manage the petitioner's European operations under the supervision of the president of the U.S. company.

The petitioner now seeks to have the beneficiary physically present in the U.S. approximately six times per year so that he may attend executive meetings and training sessions which are essential to the performance of his managerial duties, and which will allow the beneficiary to contribute along with other managerial staff to the formation of company policies and procedures. The petitioner has indicated that the beneficiary, during

his intermittent visits to the United States, will continue to perform his current duties with respect to overseeing the European operations, and that he can do so via e-mail and telephone communications with the European store managers. The AAO finds this arrangement to be plausible and concurs with counsel's assertions that the beneficiary would not be precluded from managing the petitioner's European operations while physically present in the United States.

Further, the AAO will withdraw the director's assessment that the beneficiary is not "part of the organizational structure of the U.S. entity," or that he won't be engaged in the management of a function, department, subdivision or component of the actual U.S. entity. The petitioner has persuasively established that the beneficiary manages the petitioner's European division and operates at a senior level within the organization's hierarchy, and that his primary duties, whether he is physically present in the United States or abroad, will continue to be in a managerial capacity. The petitioner has also demonstrated that the executive meetings and training sessions to be attended by the beneficiary in the United States are integral to the beneficiary's role as manager of the European operations.

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, the petitioner has sustained that burden. Accordingly, the director's August 25, 2005 decision is withdrawn.

**ORDER:** The appeal is sustained. The petition is approved.