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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, DC 20536

[redacted]

File: LIN 03 021 52745 Office: NEBRASKA SERVICE CENTER Date: JAN 27 2004

ON RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a manufacturer of control cables for the automotive and marine industries. It seeks to continue to employ the beneficiary temporarily in the United States as a project manager. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, the counsel states that the director improperly determined that the beneficiary's position as the Program Manager does not possess the required "managerial capacity" for qualification as an L-1A manager. Counsel further states that the evidence provided to the director combined with the additional evidence provided on appeal establishes conclusively that the Program Manager is a qualified L-1A manager. Counsel explains that the beneficiary previously received an approved L-1B visa. Counsel further explains that this request is prompted by the beneficiary's promotion to the position of Program Manager with the petitioning corporation.

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 issue to be addressed in this proceeding 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), provides:

> "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:

> "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.

Upon initial submission, the counsel described the beneficiary's proposed job duties as project manager as follows:

> Ms [redacted] has been promoted to the position of Program Manager. She is a senior level person in our U.S. Company, reporting directly to the Executive Vice President. This position is responsible for overall management of program launches projects, assignments

> and tasks. As Program Manager, Ms. [redacted] ses her independent discretion and authority in identifying, developing, and facilitating specific program goals relative to product cost, timing, and quality requirements. This is particularly critical to our Company, as Hi-Lex has built its reputation on meeting our customers' needs by providing high quality control cables on a timely basis.
>
> In managing our program launches, Ms. [redacted] ensures that our manufacturing facilities receive accurate and up to the minute information regarding our customers' requests for product changes, new requirements and new packing norms. She often acts as a company liaison with customers and suppliers, establishing preliminary and supplementary schedules of all key program elements and events and reviews reports regarding our customers' requirements on daily (priorities), weekly (delivery schedule), and monthly (forecast) basis. Ms. [redacted] is responsible for planning program definitions, identifying and providing resource estimates, and preliminary timing schedules. Ms. Cuevas Pizano monitors and reports active program status. She is also responsible for identifying potential problems that may jeopardize successful achievement of program goals. When problems arise, she reports this information to our Hi-Lex Mexico Quality Department and makes recommendations for resolutions.

On appeal, counsel describes the beneficiary's proposed job duties as project manager as follows:

> Ms. [redacted] has been promoted to the position of Program Manager. She is a senior level person in our U.S. Company, reporting directly to the President of Hi-Lex. This position is responsible for overall management of program launches, projects, assignments and tasks. As Program Manager, Ms. [redacted] uses her independent discretion and authority in identifying, developing, and facilitating specific program goals relative to product cost, timing, and quality requirements. This is particularly critical to our Company, as Hi-Lex has built its reputation on meeting our customers' needs by providing high quality control cables on a timely basis.
>
> As bi-lingual program manager, Ms. [redacted] is responsible for the management of the end result for new product launches, as it relates to pass-thru cables to our Hi-Lex Mexico site.

For new products/projects:

- a quote is requested by customer;
- an RFE is completed and submitted to customer;
- project is awarded;
- sales receives award letter and presented (sic) to program manager;
- launch meeting is schedule (sic) by program manager, with customer. Meeting clarifies:

  1. How material is to be packaged
  2. Characteristics of cable
  3. Production requirements
  4. Ship requirements, etc.

Approximately 40% of Ms. [redacted] time is spent performing the above duties. Approximately 60% of Ms. [redacted] time is spent performing the duties described below.

- Program manager mandates the specific program goals relative to customer requirements, timing, quality, etc., but also cost for Hi-Lex and customer ensuring that all aspects of the 'product launch' meet customer expectations, without going over budget:

Program Manager manages these expectations by specifying via memorandums, emails, facilitation of meetings, with functional managers, supervision of lab techs and support staff, preparation of timing schedule (GAANT charts, etc), along with preparation of contingency plans for all department involved in project (i.e., Manufacturing Engineering, product engineering, finance, operations, materials, shipping, and line supervisors - in addition the bi-lingual program manager manages this with our Mexico site, requiring effective communications (written and verbal) with top executives and customers, to line supervisors. Must have strong organizational skills, project management, planning and scheduling of complex tasks, along with conflict resolution.

In managing our program launches, Ms. [redacted] ensures that our manufacturing facilities receive accurate and up to the minute information regarding our customers' requests for product changes, new requirements and new packing norms. She often acts as a company liaison with customers and suppliers, establishing preliminary and supplementary schedules of all key program elements and events and reviews reports regarding our customers' requirements on daily (priorities), weekly (delivery schedule), and monthly

> (forecast) basis. Ms. [redacted] is responsible for planning program definitions, identifying and providing research estimates, and preliminary timing schedules. Ms. [redacted] monitors and reports active program status. She is also responsible for identifying potential problems that may jeopardize successful achievement of program goals. When problems arise, she reports this information to our H-Lex Mexico Quality Department and makes recommendations for resolutions.

Counsel argues that Ms. [redacted] manages an essential function of production of new product launches.

It is noted that in the first description, the beneficiary is shown as reporting directly to the executive vice president while in the description submitted on appeal, she reports directly to the president. Upon initial submission an organizational chart was submitted which also shows that she reports the president. It is determined that the actual organization placement of the offered position within the petitioner's organizational structure does not change the outcome of this decision.

The petitioner's assertions concerning the managerial and executive nature of the beneficiary's future duties are not persuasive. The petitioner's descriptions of the beneficiary's proposed job duties are not sufficient to warrant a finding of managerial or executive duties.

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. 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). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

It appears that the beneficiary would be performing the necessary operations of the petitioner while filling an important staff position. The petitioner has submitted insufficient evidence to establish that new product launches constitutes an identifiable function of the petitioner's organization. The petitioner has provided no in-depth 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. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy. For this reason, the petition may not be approved.

Beyond the decision of the director, the record contains insufficient evidence to establish that the overseas company employed the beneficiary in a primarily managerial capacity. Although counsel refers to the beneficiary's overseas position as "Production Control Manager," the petitioner's letters refer to her position as "Production Control Coordinator" and emphasize the beneficiary's administrative and coordination duties in the company's production process. The inconsistencies between counsel's assertions and the submitted evidence raise serious doubts regarding the claim that the foreign company employed the beneficiary in a qualifying capacity. *See* 8 C.F.R. § 214.2(l)(3)(iv). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.