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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

File: EAC 02 163 51643 Office: VERMONT SERVICE CENTER Date: JUN 2 9 2004

IN 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)

IN BEHALF OF PETITIONER:

[redacted]

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 nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as an international airline. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as the manager of the Aeroflot Russian station at the San Francisco International Airport. The director stated that the petitioner had not submitted requested evidence and therefore determined that the record did not establish that the beneficiary has been and will be employed in a primarily managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary has and will continue to have the same managerial duties he had when CIS granted his first L-1A visa and the subsequent extension. The petitioner asserts that the beneficiary's position meets the requirements of section 101(a)(44) of the Immigration and Nationality Act (the Act).

To establish L-1 eligibility under section 101(a)(15)(L) of 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 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.
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> (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.
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> (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.
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> (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 United States petitioner is located in San Francisco and is a branch of Aeroflot Russian Airlines, located in Russia. The beneficiary's initial L-1A visa was granted from June 2, 1999 until June 2, 2001. This visa was extended on June 2, 2001 and was valid until June 2, 2002. The petitioner seeks to amend and extend the petition's validity and the beneficiary's stay for three years at an annual salary of $40,000.

The only issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed primarily in a managerial 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-
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> i. manages the organization, or a department, subdivision, function, or component of the organization;
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> 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;
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> 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.

In a letter attached to the petition, the petitioner stated that the beneficiary is solely responsible for overseeing the daily activities of Aeroflot's operations at San Francisco International Airport. The petitioner stated "[the beneficiary] supervises and manages the engineers and technical staff responsible for the maintenance and safety of the aircraft, and all managerial and clerical staff responsible for the flight preparations, ticketing and cargo at the airport." The petitioner further explained that the beneficiary supervises two assistant managers, "each of whom has a Masters degree in aviation." Additionally, the petitioner stated the beneficiary supervises four booking and cargo agents as well as has authority over his staff's hiring and firing. The petitioner also described its use of independent contractors to perform most services for its station at the airport. The petitioner stated that the beneficiary is responsible for overseeing and coordinating the work of all the independent contractors and has the responsibility of leading negotiations of the petitioner's contracts with the station service providers.

The director issued an extensive request for additional evidence including evidence of employment abroad and evidence to establish that the beneficiary has been performing the duties of a manager with the foreign company. The director requested, in pertinent part, the following:

-Foreign Company's Organization Chart: line and block organizational chart describing its managerial hierarchy and staffing levels identifying beneficiary's position and list all employees. Include description of job duties, educational level and salaries for all employees under the beneficiary's supervision.

-Duties Abroad: Provide a detailed description. Indicate exactly whom the beneficiary directed including the job title and position description. Indicate a percentage of time the beneficiary spent in each of the listed duties.

-Purpose for coming to the United States: Provide clarification as to the reason for the beneficiary coming to the U.S. Explain how the U.S. entity functioned without the beneficiary and why the individual had to report to the U.S. company. Explain why a lower level manager or executive was not selected and explain how the parent company will function in the absence of this individual for an extended period.

Additionally, the director requested the following documents pertaining to the U.S. business:

-U.S. Business Organizational Chart Submit a copy of a line and block organizational chart describing its managerial hierarchy and staffing levels identifying beneficiary's position and list all employees under the beneficiary's supervision by name and job title. Also include a brief description of job duties, education level, annual salaries/wages (in U.S. Dollar equivalents) and immigration status for all employees under the beneficiary's supervision.

-Duties in the U.S.: Submit a more detailed description of the beneficiary's duties in the United States. List the education and employment qualifications for the position in the U.S. company. Include evidence that the beneficiary meets the petitioner's qualifications and if required, that the beneficiary has the ability to speak, read, and write English. Indicate exactly whom the beneficiary directs including their job title and position description. List all employees under the beneficiary's direction. Also indicate percentage of time spent in each of the listed duties.

-Explain why a lower level manager or executive was not selected and how the foreign company will continue to function with the absence of the beneficiary for an extended period.

-Explain why the U.S. business requires this manager/executive and how the duties will different from current managers or executives.

The director also requested the following documents pertaining to the beneficiary's qualifications:

-Employment release: Submit an original letter for the beneficiary's foreign employer to release the beneficiary from employment. Explain why the foreign company is releasing an employee in whom they have invested substantial training and resources, to be an employee of another company.

-Reason for leaving foreign employment: Submit a letter prepared by the beneficiary to explain the reason for leaving their foreign position to be an employee of another company. The letter must explain why the beneficiary is abandoning a vested and future interest in the foreign company.

-IRS Computer Tax Records: Submit original computer printouts form the Internal Revenue Service, date stamped by the IRS of the tax return filed with the IRS by the beneficiary for 2001.

Counsel for the petitioner responded to the request for evidence and stated that it appeared the questions in the notice of action "are directed toward another type of application." Counsel pointed out that the Notice of Action requests information regarding why the employee is "leaving their foreign position to be an employee of another company" (Documents Pertaining to the Beneficiary) and require the petitioner to "provide clarification as to the reason for the beneficiary coming to the U.S." (Documents Pertaining to the Foreign Company). Counsel added that she enclosed a copy of the instant petition and supporting documents and that these documents would be sufficient to allow CIS to approve the petition.

The director denied the petition, noting that though requested, the petitioner had elected not to provide CIS with a complete position description for all the employees in either the United States office or the foreign office where the beneficiary has been or continues to be employed. Additionally, the petitioner did not provide the requested breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis. The director determined that the description of the beneficiary's duties identify general managerial functions and resemble portions of the regulations. The director found the duties outlined to be vague and noted that they do not specify exactly what duties the beneficiary has been and will be performing which make him a "bona fide manager." Additionally, the director determined that the petitioner had not shown that the beneficiary has been and will be managing a subordinate staff of professional, managerial or supervisory personnel who will relieve him from performing non-qualifying duties. Therefore, the director concluded that the record does not establish that the beneficiary has been and will be employed in a managerial capacity.

On appeal, the petitioner restates the beneficiary's job duties as previously described. Additionally, the petitioner states that the beneficiary oversees the petitioner's immigration and customs work in conjunction with Citizenship and Immigration Services and U.S. Customs officials at the airport. The petitioner asserts that the beneficiary meets the requirements of the regulations.

The petitioner's assertions are not persuasive. Even though the director's request for evidence contained several requests that were not relevant to the visa petition, as noted by counsel, there were sections of the request that were related to the requested benefit. The director requested a copy of the U.S. company's line and block organizational chart describing its management hierarchy and staffing levels, clearly identifying the beneficiary's position. The organizational chart submitted with the petition did not describe the job duties of the positions supervised by the beneficiary. Additionally, the director requested a description of job duties for all employees under the beneficiary's supervision. Furthermore, the director requested a breakdown of the percentage of time the beneficiary spent in each of his listed duties. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner's vague descriptions provide insufficient detail to allow CIS to determine many of the beneficiary's specific responsibilities. Going on record without supporting documentary evidence is insufficient to meet the burden of proof in these proceedings. *Ikea US, Inc. v. INS,* 48 F. Supp. 2d 22, 24-5 (D.D.C. 1999); *see generally Republic of Transkei v. INS,* 923 F.2d 175 (D.C. Cir. 1991) (discussing burden the petitioner must meet to demonstrate that the beneficiary qualifies as primarily managerial or executive); *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel provides additional evidence on appeal. Counsel submits the previously provided U.S. organizational chart and a chart of the petitioner's present employees with detailed job descriptions. However, as noted above, this information was previously requested. The regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Furthermore, the AAO notes that the petitioner refers to an "Air Transport Agreement" dated May 23, 1993. However, this agreement does not govern or supercede CIS regulations and does not specifically pertain to L-1A visas.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary will be employed in a primarily managerial capacity. The record does not establish that a majority of the beneficiary's duties will be directing the management of the organization. The position description is vague and does not describe in detail the duties the beneficiary would perform. The petitioner did not provide information regarding the beneficiary's position when requested by the director, and therefore, did not provide sufficient information for CIS to determine whether or not the beneficiary would be acting in a managerial capacity. For this reason, the petition may not be approved.

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.