



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File: WAC 98 210 51987 Office: California Service Center Date: JAN 18 2001

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)

IN BEHALF OF PETITIONER:

[Redacted]

Public Law
Identifying documents to
prevent clearly substantiated
misuse of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 the Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, a women's fashion wear company, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its branch manager. The director determined that the petitioner had not established that the petitioning entity was engaged in the regular, systematic, and continuous provision of goods and/or services, or that the beneficiary has been and will be employed in the U.S. in a primarily managerial or executive capacity.

On appeal, counsel provides a brief 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.

8 C.F.R. 214.2(l)(14)(ii) states that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The United States petitioner was established in 1997 and states that it is a wholly owned subsidiary of [REDACTED], located in Seoul, Korea. The petitioner seeks to employ the beneficiary as president for two years at a weekly salary of \$800.

The first issue in this proceeding is whether the petitioning entity is doing business.

8 C.F.R. 214.2(1)(1)(ii)(H) states:

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The director noted in her decision that although the petitioner submitted an unaudited financial statement showing sales of \$209,856, for a six month period in 1998 and a copy of its 1997 income tax return which indicated gross sales of \$187,160, no sales receipts, major sales contracts, or clients accounts were submitted to show how these figures were obtained. The director further noted that:

The petitioner did submit bills of lading showing that the Oilily clothier, Hong Kong and the Netherlands, imported goods to the U.S. entity. Also goods were received from an [REDACTED] clothing distributor in Illinois. Again, no sales invoices, contracts or accounts were submitted to show that goods were sold to clients, although the petitioner submitted photographs showing a showroom with goods. Finally, the petitioner submitted invoices and bills of lading showing that goods were exported from the U.S. entity to the foreign parent entity. Therefore, documentation shows that the petitioner is functioning as an agent and has not been conducting regular, systematic, and continuous provision of goods and/or services in the U.S.

On appeal, counsel fails to address the director's concerns. Therefore, the petitioner has not overcome this portion of the director's objections and the petition may not be approved.

The remaining issue in this proceeding is whether the beneficiary has been or will be employed in the United States in a primarily executive or managerial 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.

On the Form I-129, the petitioner stated that the beneficiary "developed long-range goals and budgets, set personnel policies, assigned tasks, reviewed performance, overall supervision of company."

In her decision, the director determined that the petitioner failed to demonstrate that the beneficiary was employed in a managerial or executive capacity. The director noted that the beneficiary was not supervising any professional employees and would be likely to assist with the day-to-day non-managerial duties of the retail store. The director concluded that the beneficiary would be employed as a first-line supervisor and not as a manager or executive.

On appeal, counsel argues that under the "managerial capacity" definition, the beneficiary manages the organization as "he develops long range goals and budgets, sets personnel policies, assigns tasks and reviews performance." With regard to the beneficiary's "executive capacity," the beneficiary "establishes the goals and policies of the branch office."

Despite counsel's argument, the evidence provided is not sufficient in demonstrating that the beneficiary has been and will be employed in a primarily managerial or executive capacity. It must be evident from the documentation submitted that the majority of the beneficiary's actual daily activities have been and will be managerial or executive in nature. The description of duties provided is too general to convey any understanding of exactly what the beneficiary does on a daily basis. Simply stating that the beneficiary develops long range goals and budgets; sets personnel policies; assigns tasks and reviews performance; and establishes the goals and policies of the branch office, without further elaboration, is not sufficient in demonstrating the beneficiary's managerial and executive responsibilities.

The fact that an individual has a managerial or executive title does not necessarily establish eligibility for classification in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. The petitioner has not sufficiently demonstrated that the beneficiary has been or will be primarily engaged in managing or directing the management of a function, department, subdivision, or component of the U.S. entity. Based on the evidence submitted, it cannot be found that the beneficiary has been or will be employed in a primarily managerial or executive capacity. For this additional 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.