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]

Public Copy

File: SRC 00 034 51846 Office: TEXAS SERVICE CENTER Date: JAN 18 2001

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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

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

The petitioner is engaged in the restoration of fire damaged businesses and private homes. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its general manager. The director determined that the petitioner had not established that the beneficiary will be employed in a managerial or executive capacity.

On appeal, counsel argues that the beneficiary qualifies as an executive under the definition contained in 8 C.F.R. 214.2(l).

To establish 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.

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.

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 incorporated in 1998 and states that it is a wholly-owned subsidiary of [redacted] located in [redacted] The petitioner declares five employees and approximately $95,000 in gross revenues. The petitioner seeks to extend the petition's validity and the beneficiary's stay for three years at an annual salary of $39,000.

The issue in this proceeding is whether the beneficiary has been and will be performing managerial or executive duties.

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.

The petitioner described the beneficiary's prospective duties as follows:

JOB DUTIES	WEEKLY TIME ALLOTMENT
1. Establishing new accounts with Insurance companies, vendor, Suppliers.	15.0
2. Review corporate, financial, and operating reports of the U.S. corporations.	3.0
3. Review, coordinate, assign, and supervise the work and procedures of the U.S. Corporation.	10.0
4. Prepare and review proposals for services to be sold.	4.0
5. Negotiate service contracts to obtain the best possible terms.	3.0
6. Train personnel on implementation of new products and services offered.	5.0
7. Direct and manage all miscellaneous aspects of company administration.	3.0
TOTAL	43 HOURS

The record contains an employee list which indicates that the petitioner employs a crew chief, two crew helpers, an

administrative assistant, and an owner/marketing.

In the denial, the director stated that the record did not establish that the beneficiary would be supervising any subordinate manager employees. The director further noted that other than the beneficiary's title, the record did not establish that the beneficiary would be working at a senior level within the organization. The director concluded that the petitioner had not sufficiently shown that the beneficiary would be managing or directing the management of a department, subdivision, function or component of the organization.

On appeal, counsel for the petitioner submits a brief and additional evidence. Counsel reiterates the claim that the evidence submitted supports a finding that the beneficiary has been and will be employed in a managerial or executive position.

Counsel further states that:

> As General Manager and Administrator of the U.S. entity, [the beneficiary] is solely responsible for the supervision and control of the entire operation, as well as, the management of the organization. His duties, in the organization, include negotiating service contracts with insurance companies and suppliers to obtain the best possible terms; ensuring consistent bookkeeping of the corporation financial and operating reports in compliance with the parent company policies; coordinating, assigning and supervising the work and procedures of the company's U.S. operations; hiring and firing of personnel; training employees on the implementation of new industry standards and servicing policies; directing, and managing all miscellaneous aspects of the company's administration; providing corporate direction for U.S. expansion plans and otherwise ensuring the successful performance of the Petitioner's U.S. operations.

On review, the record as presently constituted is not sufficient to demonstrate that the beneficiary has been or will be employed in a primarily managerial or executive capacity. In place of a detailed description of the actual services that the beneficiary is to perform, the petitioner has provided a vague and general description of the beneficiary's duties that merely paraphrases aspects of the regulatory definition of managerial and executive duties. On appeal, the petitioner did not submit any additional evidence which would support a finding that the beneficiary is to be employed in a primarily managerial or executive position. Without substantial documentation illustrating the petitioner's business and the beneficiary's proposed duties, it cannot be concluded that the requirements for this nonimmigrant classification have been satisfied. Simply going on record without supporting documentary evidence is not sufficient for the purpose

of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record contains insufficient evidence to demonstrate that the beneficiary has been employed in a primarily managerial or executive capacity. Further, the record is not convincing in demonstrating that the beneficiary's duties in the proposed position will be primarily managerial or executive in nature. The description of the duties to be performed by the beneficiary in the proposed position does not persuasively demonstrate that the beneficiary will have managerial control and authority over a function, department, subdivision or component of the company. Further, the record does not sufficiently demonstrate that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties. The Service is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title. The petitioner has not established that the beneficiary has been or will be employed in a primarily managerial or executive capacity.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.