D7

U.S. Department of Justice

Immigration and Naturalization Service

identification data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: WAC-97-207-53343 Office: California Service Center Date: 8 MAR 2002

IN RE: Petitioner:
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 Copy

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

Myra L. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner engages in the business of exporting medical equipment and supplies. It seeks to employ the beneficiary temporarily in the United States as its president and chief executive officer at an annual salary of $48,000 per year. The director determined that the petitioner had not established the size of the U.S. investment and the ability of the foreign entity to remunerate the beneficiary and commence doing business, or that the U.S. entity had acquired sufficient premises to house its operation.

On appeal, counsel asserted that the petitioner is sufficiently capitalized and financed to commence doing business in the United States as it is infusing limited initial capital and financing the majority of its operation with debt income. Counsel further asserts that the petitioner has provided the Service with evidence that it has leased sufficient physical premises to commence business.

The Associate Commissioner for Examinations determined that the petitioner had overcome the issue of physical premises. The Associate Commissioner dismissed the appeal reasoning that the evidence presented did not demonstrate the size of the U.S. investment or the foreign organizations ability to remunerate the beneficiary and commence doing business in the United States. Beyond the decision of the director, the Associate Commissioner found that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On motion, counsel resubmits financial documentation claimed relevant to the capitalization of the United States entity as well as a letter from an accountant stating that $50,000.00 is sufficient "start-up" capital for the U.S. entity.

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.

The first issue in this proceeding is whether the petitioner has established the size of the U.S. investment and the ability of the

foreign entity to compensate the beneficiary and commence doing business in the United States.

On motion, counsel states , in pertinent part:

> The decision of the Office of Administrative Appeals (AAO) was made [date]. In that decision, the AAO finds that the petitioner had sufficient space, but that evidence of a $25,000.00 initial capitalization had not been provided. A review of the previous attorney's file shows that a statement account from Great Western Bank, dated March 27, 1998, was provided to the AAO. This statement showed a balance of $25,592.72. This document is listed on the index of supporting documentation as Exhibit 42...Exhibit 43 was a letter from a Certified Public Accountant stating that $25,000.00 is a sufficient amount of capitalization.

The record reveals that a photocopied bank statement, dated March 27, 1998, was present in the record at the time the appeal was dismissed. The statement from Great Western Bank indicates that on March 23, 1998, a deposit of $2,000.00 was made to the petitioner's account, followed by a deposit of $23,000.00 on March 26, 1998, bringing the ending balance to $25,582.72. While the Service's failure to address the bank statement is not insignificant, neither the statement nor the record as presently constituted evidences the origin of the two aforementioned deposits. The statement, standing alone, does not constitute sufficient evidence that the U.S. entity is adequately capitalized.

In dismissing the appeal, the Associate Commissioner for Examinations stated, in pertinent part:

> The record contains a letter dated December 22, 1997, from the general director of the foreign organization, which indicates that the foreign entity "has the capacity and agrees to economically underwrite the U.S. company [the petitioner]. Having at its disposition an amount of $50,000.00 (dollars) and/or a sufficient amount in order to maintain operations during its first year of operations..."

The commissioner noted that the record contained no financial documents establishing the parent entity's ability or clear intent to invest $50,000.00 for the first year of operation. Nor does the petitioner address how the beneficiary's $48,000.00 per year salary would be met.

The remaining issue is whether the petitioner has demonstrated that the beneficiary will be employed 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.

Although referenced by the commissioner in dismissing the appeal, the petitioner, on motion, does not address the issue of whether the beneficiary will be employed in a primarily managerial or executive capacity. Therefore, this issue remains unresolved. Accordingly, the previous decisions of the director and the Associate Commissioner will not be disturbed.

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 decision of the Associate Commissioner dated August 12, 1999, is affirmed.