U.S. Department of Justice

Immigration and Naturalization Service

Identifying 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]

JAN 08 2003

File: SRC-01-164-54740 Office: Texas Service Center Date:

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]

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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner, an international freight forwarding company, seeks authorization to employ the beneficiary temporarily in the United States as its area manager. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

On appeal, the petitioner argues that the beneficiary will be employed in a primarily managerial or executive capacity.

On appeal, counsel states that "although the U.S. business has been [sic] incorporated in 1996, it has never been in full operation. From 1996 through February 2000, the U.S. business does [sic] not have any employee[s]. From 1996 through April 2001, the same month the petition was filed, the U.S. business does [sic] not have its own office."

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.

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.

The U.S. petitioner states that it was established in 1996 and that it is an affiliate of Cargo Freight Services, Ltd., located in Sanpokong, Hong Kong. The petitioner declares two (2) employees and a gross annual income of approximately $246,767 (1999). It

seeks to employ the beneficiary for three years at an annual salary of $36,000.

At issue in this proceeding is whether 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.

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

> [The beneficiary] shall become the Area Manager of the Atlanta branch and in charge of and be responsible for the full management and day-to-day operation of said office. [The beneficiary] will be charged for [sic] providing complete international freight forwarding service to clientele of [the] United States in general and south eastern and southern part of [the] United States in particular, including but not limited to the general duties and responsibilities in establishing operation routines and policies, hiring and firing employees, handling finances and all accounts of the branch office, marketing, developing and maintaining clientele, management of business premises, participate in management level communication[s] with Cargo Freight head office in Hong Kong. [The beneficiary's] experience with Cargo freight and over nine (9) years of experience in the international freight forwarding service shall ensure our success in the United States.

In a letter dated May 24, 2001, the Service requested that the petitioner submit additional evidence to corroborate his claimed eligibility for the benefits sought.

In response to the Service request, the petitioner stated, in pertinent part, that:

> Please be advised that the proposed position for the applicant/beneficiary shall include managing professional individuals or other managers, such as office manager and sales manager, eventually. However, at this onset stage of developing the market in [the] southeastern and southern part of [the] United States, [the] petitioner has only made available two positions, namely, Operation Clerk and Sales Representative.
>
> The duty [sic] of [the] Operation Clerk includes answering the phone, issuing invoice[s], arranging cargo

> shipping, providing customer service and such other general office work. The dut[ies] of the Sales Representative include developing the market, establishing and following up [with] new customers by phone contact and office visit, and such other sales related customer services.

The petitioner restated the beneficiary's aforementioned job duties, adding that "the applicant/beneficiary shall delegate to his subordinates to such extent that he shall serve and be responsible for the management aspect of the branch operation rather than frontline operation."

On appeal, counsel states, in pertinent part, that:

> Due to the nature of the business, the size of staffing are [sic] not accurately reflected in the number of employees stationed in [the] U.S. The supportive staff including administrative support, accounting, sales airfreight, seafreight, warehouse worker, agent and broker, who works at the direction of the beneficiary far exceed the number of employees stationed at the U.S. business.
>
> The offered position, along with the Branch Managers of other international branch offices, [is] situate[d] at the high management level directly accountable and reporting to the Managing Director, the highest management position of the organization. The Branch Managers manage their respective foreign offices and directly supported by a large team of supportive staff stationed in Hong Kong.
>
> In view of the size, nature and history of the foreign company, for which the U.S. business is a part thereof, it is obvious that the whole business operation is not one of small scale, but of international level with services provided through four branches and, including the headquarters, based in five (5) major cities of the world and provides international freight services reaching all over the world.

Counsel submits a photocopied organizational chart indicating that the U.S. office located in Atlanta, Georgia has three employees including the beneficiary, an operations clerk and a sales "executive." The organizational chart also depicts a functional relationship between the sales executive and the administrative offices of the foreign company. Counsel also submits an affidavit from the managing director of the foreign entity, who espouses the need for a manager at the U.S. company's (Georgia) office and various photocopied business related documents.

Although counsel argues that the U.S. entity is a new business and filed the petition accordingly, for the purposes of this proceeding, the record indicates that the U.S. entity was incorporated on October 22, 1996, as an affiliate of Cargo Freight Services Limited a Hong Kong based company. Therefore, it must be concluded that the U.S. entity began to conduct some level of business on that date. Service regulations require that a petition for a new office be filed within one year of the date it began doing business. Therefore, the instant petition will not be treated as a new office petition.

Counsel's assertions on appeal notwithstanding, the information provided by the petitioner describes the beneficiary's duties only in broad and general terms. There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as supervision of "professionals", establishing operation routines and policies, hiring and firing employees, handling finances and all accounts of the branch office, marketing, developing and maintaining clientele, managing the business premises, and participating in management level communication[s] are without any context in which to reach a determination as to whether they would be qualifying. The use of the position title of "area manager" is not persuasive.

The record contains insufficient evidence to demonstrate that the beneficiary will be employed in a managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would credibly demonstrate that the beneficiary will be managing the organization, or managing a department, subdivision, function, or component of the company. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title.

Further, the petitioner's evidence is not persuasive in establishing that the beneficiary will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve her from performing nonqualifying duties. Although the petitioner claims that the beneficiary will manage a large supporting staff, it has not provided a comprehensive description of those duties. Based on the evidence furnished, it cannot be found that the beneficiary will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, there is no evidence to establish that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad on completion of the temporary assignment in the United States pursuant to 8 C.F.R. 214.2(l)(3)(vii). As the appeal

will be dismissed on the grounds discussed, this issue need not be examined further.

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.