U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

D7

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

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: SRC 97 136 52260 Officee: TEXAS SERVICE CENTER Date: JAN 10 2003

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 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.

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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

for Mary F. Navarro

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition and a subsequent motion to reconsider were 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 is an import/export firm which seeks to continue to employ the beneficiary in the United States as its vice president. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, counsel states that the Service has improperly imposed a restrictive requirement for the petitioner to have employees after the first year of a start-up operation rather than allowing the petitioner to be in the process of selecting employees during the first year of operation. Counsel further states that alternatively, the petition extension should be approved on the basis of the functional executive/manager definition as the beneficiary has served as a senior level executive/manager for the Japanese parent company for a considerable period of time and serves in the most senior level executive/managerial position for its U.S. operation. Counsel argues the director's decision is flawed in relying exclusively on the issue of whether there were any other employees hired as of March 31, 1997 when the I-129L extension petition was filed. Counsel indicates the more appropriate test is whether the petitioner was in the process of securing personnel, particularly when the executive is giving great attention to the creation of business relationships and sales. Counsel indicates that the initial petition was granted with validity through April 1, 1997 and the beneficiary only arrived in the United States in June 1996 and was therefore, in charge of the enterprise for less than a full year.

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 issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in the United States in a primarily managerial or executive 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-

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

iii. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In the petition, the petitioner described the beneficiary's job duties as follows:

> At this time, [redacted] has determined that Mr. [redacted] continued employment with the company for three additional years would be of vital importance to the company. [redacted] is in the midst of an initial expansion in its current business operation and will be expanding its staff and services within the next few months. Additionally, there are several key projects currently in development which continue to require Mr. [redacted] attention. In short, [redacted] skills, talents and language ability are critically needed at this time to ensure that this new venture continues to expand and reach its full potential.

The petitioner registered to conduct its wholesale import/export business in the State of Georgia on April 11, 1996. The beneficiary entered this country on March 19, 1997 in L-1A nonimmigrant status based upon a petition valid from April 17, 1996 through March 31, 1997. This visa petition was filed on March 31, 1997. At that time, the firm had been in operation for eleven and one-half months and the petitioner projected that two additional employees would be hired within two to three months.

In this case, the description of the beneficiary's job duties is insufficient to warrant a finding that the beneficiary will be employed in an executive or managerial capacity. The beneficiary's duties as outlined are vague and general and do not provide comprehensive data about the beneficiary's daily activities. It appears, at most, the beneficiary will be performing operational rather than managerial duties. The petitioner has provided insufficient evidence to establish that the beneficiary has been or will be managing or directing the management of a function, department, subdivision or component of the company.

The petitioner has not provided evidence that the beneficiary will be managing a subordinate staff of professional, managerial or supervisory personnel who relieve her from performing non-qualifying duties. It appears that the beneficiary is performing the necessary tasks for the ongoing operation of the company, rather than primarily directing or managing those functions through the work of others.

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.