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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

File: WAC 01 125 56782 Office: CALIFORNIA 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]

PUBLIC COPY

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

Mym L. Rosenberg
for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a domestic and international transportation, logistics and freight forwarding company. It seeks to employ the beneficiary in the United States as an air export specialist. The director determined that the petitioner had not provided evidence that the beneficiary would be employed in a managerial or executive capacity.

On appeal, counsel states that the beneficiary has been performing the duties of a manager or executive with the foreign company and will be performing the duties of a manager or executive with the U.S. company. Counsel further states that the beneficiary will be managing the U.S. & Mexico International Import/Export Department of the firm in Rancho Dominguez, California. Counsel submits the position descriptions of the staff that the beneficiary would supervise. Counsel requests that the visa petition be approved.

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)(1)(ii), in part, states:

> Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge. 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 issue in this proceeding is whether the petitioner has established 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:

> 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.

Upon initial submission, the petitioner described the duties of the offered position as follows:

[redacted] will be employed as an Air Export Specialist in our International Export department in Rancho

> Dominguez, California facility. She will provide expertise on exporting and importing shipments to Mexico. ... She will be responsible for the interpretation of safety regulations, operating and maintenance procedure manuals, and preparation of rate quotations, export documentation in FMS and Seko System.

On appeal, the petitioner describes the beneficiary's prospective job duties in the United States as follows:

> *Supervise the Transborder-Mexico Services.
> *Secure competitive prices from Airlines.
> *Manage Yield.
> *Maintain Consolidation Schedule.
> *Schedule staff.
> *Comply with Corp. Operation/ISO standards.
> *Support Sales Group.
> *Ensure all correspondence, email/fax, is answered according to standard.
> *Ensure all accounting is in compliance with Ops. Standards.
> *Develop and maintain a strong Operations staff.

The petitioner provides an organizational chart showing that the beneficiary, (with the title Transborder-Mexico Supervisor), would supervise three persons in the offered position, an air export agent, an ocean export specialist and an ocean export agent.

The position descriptions of the three persons that the beneficiary would supervise indicate that the education and/or experience required for the jobs is a high school diploma or GED equivalent. The positions also require two or three years of related experience and/or training or an equivalent combination and experience. The record indicates that the beneficiary would provide expertise and supervision on exporting and importing shipments to Mexico and would be responsible for the staff regarding the U.S./Mexico trans-border duties.

In this case, the descriptions of the beneficiary's job duties are insufficient to warrant a finding that the beneficiary will be employed in a managerial or executive capacity. It appears that the beneficiary would be performing the necessary operations of the petitioner. The petitioner has provided no persuasive description of the beneficiary's duties that would demonstrate that the beneficiary will be managing or directing the management of a function, department, subdivision or component of the company. The petitioner has not shown that the beneficiary will be functioning at a qualifying senior level within an organizational hierarchy. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that the beneficiary has been employed in a qualifying managerial or executive capacity abroad. Additionally, the record is not persuasive and does not contain sufficient documentation to establish that a qualifying relationship exists between the petitioner and a foreign firm, corporation or other legal entity. See 8 C.F.R. 214.2(l)(1)(ii)(G). As the appeal will be dismissed for the reason stated above, these issues 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.