U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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]

File: WAC-98-026-50017 Office: California Service Center Date: JAN 15 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 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, California Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations on October 30, 1998. On July 13, 1999, the Associate Commissioner, in error, issued a second appeal decision in which the director's decision, dated March 9, 1998, was withdrawn and the petition was remanded to the director for further consideration. As an appeal decision in this case was issued on October 30, 1998, and the second appellate decision, dated July 30, 1999, was issued in error, the matter will be reopened on Service motion pursuant to 8 C.F.R. 103.5(a)(5)(i). The director's decision dated March 9, 1998 and the Associate Commissioner's decision dated October 30, 1999 dismissing the appeal is withdrawn. The matter is again before the Associate Commissioner on appeal. The Associate Commissioner's decision, dated July 13, 1999, remanding the petition to the director is affirmed.

The petitioner, an import/export company, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not demonstrated that the U.S. operation within one year of the approval of the petition would support an executive or managerial position.

On appeal, counsel provided additional information in support of the appeal.

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)(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.

In a remand order dated July 13, 1999, the Associate Commissioner for Examinations states that the single issue raised by the director in denying the petition, whether the United States operation within one year of approval of the petition would support an executive or managerial position, is not an issue for consideration in a petition for an extension of previously approved employment and should have been discussed in the adjudication of the original petition.

The Associate Commissioner further stated, in part, that:

> This petition should be adjudicated on the basis of the regulations governing extensions unless the director is going to revoke approval of the original petition based on the issue of whether the U.S. operation within one year of the approval of the petition would support an executive or managerial position. If the approval of the original petition is revoked, this petition would be moot.

This case is again remanded to the director in accordance with the foregoing decision of the Associate Commissioner and entry of a new decision.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision of March 9, 1998, and the Associate Commissioner's decision of October 30, 1998, are withdrawn. The Associate Commissioner's. remand order of July 13, 1999 is affirmed.