



U.S. Department of Justice
Immigration and Naturalization Service

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



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File: SRC 97 133 51318

Office: Texas Service Center

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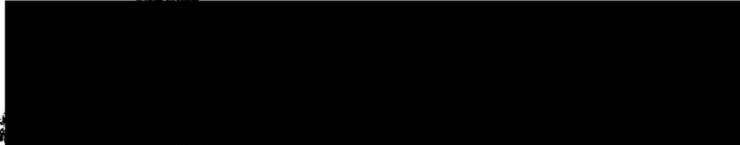
IN RE: Petitioner:
Beneficiary:



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)

Public Copy
Identifying information is
prevented clearly unwarranted
invasion of personal privacy

IN BEHALF OF PETITIONER:



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

Terrance M. O'Reilly, Director
Administrative Appeals Office

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

The petitioner is engaged in the manufacture and sale of wooden educational toys. It seeks to employ the beneficiary temporarily in the United States as the president of its new office. The director determined that the petitioner had not established that the foreign entity had been doing business, or that the beneficiary had been employed abroad in a primarily managerial or executive capacity.

On appeal, counsel submits a brief in rebuttal to the director's findings.

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.

Title 8 C.F.R. 214.2 (1)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

A) Sufficient physical premises to house the new office have been secured;

B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to

remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The United States petitioner was established in 1997 and states that it is a wholly owned subsidiary of Wood-N-Toys, located in South Africa. The petitioner seeks to employ the beneficiary for one year at an annual salary of \$40,000.

At issue in this proceeding is whether the foreign entity is doing business.

Title 8 C.F.R. 214.2(1)(1)(ii)(H) states:

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In his decision, the director noted that the only evidence submitted for the foreign entity consisted of an unaudited accountant report for the year ending February 28, 1997, and shipping receipts. The director further noted that the petitioner failed to submit a current lease for the U.S. entity.

On appeal, counsel states in part that:

With its submission package, the Beneficiary's foreign employer submitted Financial Statements as of February 1997 prepared by Commercial & Financial Accountants, an Employee Roster, invoices for 1996 and 1997, payroll receipts and copies of payroll checks, all of which clearly show the continuous provision of goods or services.

Counsel's argument is not persuasive. The record contains only seven tax invoices for the foreign company. As stated by the director, "no invoices were submitted establishing a regular, systematic and continuous provision of goods or services abroad." The petitioner has not persuasively demonstrated that the foreign entity is doing business. For this reason, the petition may not be approved.

Another issue in this proceeding is whether the beneficiary has been 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.

In his decision, the director noted that due to the U.S. entity's limited number of employees, the record was not persuasive that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel states in part that:

The classification sought for [the beneficiary] was both as an executive and as a manager. You apparently did not consider him as an executive. The position he will be filling in the United States is clearly executive. The position he fills in South Africa is also an executive position. ("President"). The letter submitted in support of the petition details the executive duties of [the beneficiary] with the Foreign parent company. These duties are clearly executive. In the capacity of President, as stated in the original support letter and supplemental support letter, [the beneficiary], through his subordinate professionals, had complete responsibility for all aspects of planning the company's objectives. He directed the preparation of budgets, forecasts and all financial planning activities. He supervised the planning of production and purchasing of materials used in the manufacture of wooden toys. Further, he supervised the Manager of Carpentry. The Manager of Carpentry supervises and coordinates the activity of the Carpenter and other employees being hired by the company. He has responsibility for insuring that the woodworking machinery is set-up and installed properly and is responsible for evaluating the performance of the Carpenter. The position of Carpenter is a professional position. The utilization of woodworking machinery such as lathes, molders, planers, saws and shapers and the requirements of being able to cut or shape sample toys, verify the cuts, angles and dimensions with specifications using gauges, calipers, square rules and templates, make this position a professional one. The petitioner manages a professional who in turn managers another subordinate professional.

Simply put, the beneficiary directs the management of the company, establishes the goals and policies of the company, exercises complete latitude in discretionary decision-making, and receives no supervision from higher level executives. He clearly meets the regulatory definition of executive.

Counsel claims that the beneficiary supervises the manager of carpentry who in turns supervises a carpenter. Counsel further claims that the position of carpenter is a professional position. Counsel fails, however, to submit any evidence, such as a

classification from the U.S. Department of Labor's Dictionary of Occupational Titles in support of this claim. The assertions of counsel do not constitute evidence. Matter of [REDACTED], 19 I&N Dec. 533, 534 (BIA 1988); Matter of [REDACTED], 17 I&N Dec. 503, 506 (BIA 1980).

The record as presently constituted does not demonstrate that the beneficiary will function at a senior level within an organizational hierarchy other than in position title. The record as presently constituted does not demonstrate that the beneficiary will supervise a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing nonqualifying duties. The record contains no comprehensive description of the beneficiary's duties that persuasively demonstrates that the beneficiary will be performing in a primarily managerial or executive capacity. The record contains no comprehensive description of the beneficiary's duties that demonstrates that the beneficiary will be managing or directing the management of a department, subdivision, function, or component of the petitioning organization. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proof 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.