

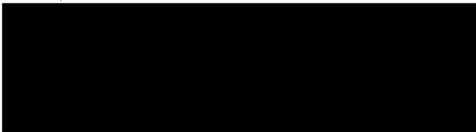


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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: WAC 99 102 50671

Office: California Service Center

Date: APR 13 2001

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)

IN BEHALF OF PETITIONER



Identifying information
prevent clearly unwarranted
disclosure of personal privacy

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

Myra L. Rosenberg
for Robert V. Wiemann, Acting 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. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is an import and export business. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its branch manager. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity, or that the U.S. entity had the ability to pay the wages of the beneficiary.

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

The Associate Commissioner determined that the petitioner had provided sufficient evidence to demonstrate that it had the ability to pay the beneficiary's wages. The Associate Commissioner dismissed the appeal, however, reasoning that the evidence submitted by the petitioner had not shown that the beneficiary would be employed in a primarily managerial or executive capacity.

On motion, counsel contends that the "new evidence and factual analysis presented herein mandate a finding by the Immigration and Naturalization Service that the Beneficiary is legally entitled to the requested extension."

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.

The United States petitioner was established in 1998 and states that it is a wholly-owned subsidiary of Ben-K International Co., located in Seoul, Korea. The petitioner seeks to employ the beneficiary for a three-year period at an annual salary of \$33,600.

At issue in this proceeding is whether the beneficiary has been and 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:

"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 Associate Commissioner noted that the record contained a quarterly tax report for the period ending December 11, 1998, which indicated the petitioner had two employees, the beneficiary and [REDACTED]. The Associated Commissioner further noted that no position description for the beneficiary's subordinate employee had been submitted.

On motion, counsel argues that the petitioner employs two professional full-time employees who are subordinate to the beneficiary. Counsel provides a description of the duties of the beneficiary and the two subordinates as follows:

1. Name: [REDACTED]
Position: General Manager
Education: Bachelor's degree in Public Administration from Kook Min University.
Immigration Status: L-1A
Duties: In lieu of president, Mr. [REDACTED] oversees and manages overall daily business operations; manages and controls subordinate employees such as company manager and assistant manager; develops organizational short-term and long-term policies and goals; has the highest authority in its personal transactions; and makes final decisions on fundamental and important issues of the company in accordance with the directions from the parent company in Korea.

2. Name: [REDACTED]
Position: [REDACTED]
Education: B.S. Degree in Animal Science from Konkuk University
Immigration Status: L-1A
Duties: Mr. [REDACTED] assists the general (branch) manager Mr. [REDACTED] in developing long range goals, objectives and organizational policies; manages and controls the assistant manager's function such as formatting and implementing sales and marketing plans; and is also responsible for strategic management and planning of overseas operation.

3. Name: [REDACTED]
Position: Assistant Manager
Education: B.S. Degree in Business Administration from Kyung Hee University
Immigration Status: Legal Permanent Resident
Duties: Mr. [REDACTED] is directly in charge of Sales/Marketing Department, Accounting/Management Department, and Export/Import/Storage Department of the U.S. subsidiary; he assists both general manager and manager in dealing with daily business activities; coordinates and corresponds with the sales representatives, banks, accountants, and forwarding company; and conducts research on market trend and negotiates with vendors.

In review, the additional information presented on motion is not sufficient in overcoming the objections of the director and the Associate Commissioner. The additional information has not provided the Service with any account of executive or managerial decisions necessary to oversee and manager this particular business. The record fails to demonstrate exactly what the beneficiary has been and will be doing on a daily basis. It must be evident from the documentation submitted that the majority of the beneficiary's daily activities have been and will be primarily managerial or executive in nature. The petitioner has provided no comprehensive description of the beneficiary's daily duties to establish this. Simply stating that the beneficiary oversees and manages overall daily business operations, is not sufficient in establishing the beneficiary's managerial or executive responsibilities. The petitioner has not demonstrated that the beneficiary has been or will be functioning at a senior level within an organizational hierarchy.

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 decision of the Associate Commissioner dated June 9, 2000, is affirmed.