



U.S. Department of Justice

Immigration and Naturalization Service

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**PUBLIC COPY**

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



**JAN 23 2001**

File: EAC 00 036 51503 Office: Vermont Service Center Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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)

identification data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

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

The petitioner, a company that imports and exports clothing and other goods, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its director of marketing operations. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel argues that the beneficiary is employed in a primarily managerial or executive capacity and submits a description of the beneficiary's duties.

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.

The U.S. petitioner states that it was established in 1998 and that it is a subsidiary of [REDACTED], located in Seoul, Korea. The petitioner does not specify the number of its employees. It declares a gross annual income of approximately \$250,000. It seeks to extend the petition's validity and the beneficiary's stay for an unspecified number of years at an annual salary of \$20,000.

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

"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.

The petitioner describes the beneficiary's duties with the U.S. entity as follows:

As Executive Director of Marketing, alien executive has been primarily responsible for development of the critical and strategic marketing sales plans and procedures used by parent company in its operations. Alien has had full authority to oversee & manage marketing and sales managerial personnel, and has full budgetary control in marketing budget. As a key contributor to the overall marketing development, alien is a key executive member of the executive/managerial staff.

Alien executive will be continuing the position of Executive Director of Marketing Operations for domestic subsidiary company ██████████ Inc. In this capacity, alien will be primarily responsible for development of the marketing strategic plans which would be operationally synchronous with the existing strategic plans of the parent company in Korea. In addition, alien executive will be responsible for the development of the vital strategic expansion plans which will be incorporated into the operation plans of parent company.

In a letter dated December 4, 1999, the Service requested that the petitioner respond to the following:

Submit additional evidence to establish that the beneficiary will be employed in a(n) executive capacity in the United States firm.

Submit a breakdown of the number of hours devoted to each of the beneficiary's proposed job duties on a weekly basis.

Submit evidence of the staffing of the United States organization. Indicate the number of employees, the duties performed by each employee or each section, as well as the management and personnel structures of the United States firm.

If the company has used contractors rather than employees to perform any functions, submit evidence documenting the number of contractors utilized and the duties performed.

Submit photographs of the interior and exterior of the premises that is occupied by the foreign entity. These should include photographs which clearly depict the organization and operation of the entity.

In response, the beneficiary's duties were further described as follows:

1. Development and expansion of overall strategic marketing and operations plans for business expansion for Sungwoo Industrial Company; (6.5 hours)
2. Overall management of marketing staff in execution of developed strategic plans; (6.0 hours)
3. Hire and discharge marketing personnel staff for [REDACTED] Inc. towards execution of developed strategic plans; (5.0 hours)
4. Establish overall sales goals for [REDACTED] Inc. in conjunction with needs of [REDACTED] and foreign parent company; (4.5 hours)
5. Correspond directly with import and export partners in Asian markets to enhance overall product breadth and profitability for [REDACTED] Inc.; (5.0 hours)
6. Aid in overall development of corporate goals and objectives for [REDACTED] Inc. (4.5 hours)
7. Provide business interface to foreign business partners, including with foreign parent company in Korea; (4.0 hours)
8. Provide marketing inputs [sic] to foreign parent company in order to aid in development of efficient

overall business plans for foreign parent company. (4.0 hours)

The petitioner also provided the following description of its other employees' duties:

President/[REDACTED]: Overall management & direction of corporation planning and operations of subsidiary

Director of Marketing Operations/[REDACTED]  
Overall development & management of marketing plans and activities for subsidiary

Director of Finance/[REDACTED] Overall Management of accounting and financial planning for subsidiary

Operations Manager/[REDACTED] (acting): Development of operations details and management of daily operations staff

Marketing consultant (to be hired): Provide marketing analysis, data, and market penetration strategies for subsidiary

Sales representative/[REDACTED] and other position to be hired: Penetrate target market segments with direct sales procedures and tactics

Sales Manager/[REDACTED]: Analyze and develop sales plans and strategic plans, and overall daily management of staff market and sales personnel

On appeal, the petitioner submits another description of the beneficiary's duties.

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. Although the petitioner's descriptions of the beneficiary's duties are lengthy, they are also repetitive and vague. There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as being responsible for management of marketing functions; being responsible for directing "ramp-up" activities of the subsidiary; having the authority to acquire and incorporate personnel; spearheading directives and activities; having the authority to conduct business negotiations; establishing goals; providing analysis relating to the U.S. entity's progress; analyzing market trends; comparing marketing reports; interfacing and interacting with management of corporate clients to ascertain their interests; being responsible for maintaining alertness and quick "reflexes" of the U.S. entity; being responsible for controlling budget expenditures and

maintaining accounts; analyzing managerial profit and loss accounts; and identifying and targeting points of breakthrough as a result of market forces, are without any context in which to reach a determination as to whether they would be qualifying. The use of the position title of "director of marketing operations" is not sufficient.

The record contains insufficient evidence to demonstrate that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary has been or will be managing the organization, or managing a department, subdivision, function, or component of the company. The petitioner has not shown that the beneficiary has been or will be functioning at a senior level within an organizational hierarchy other than in position title.

Further, the petitioner's evidence is not sufficient in establishing that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing nonqualifying duties. The beneficiary has one subordinate sales manager and sales representative. The petitioner indicates that it intends to hire an additional sales representative and marketing consultant. Accordingly, it is unclear to what extent the sole sales representative currently relieves his two managers from performing non-qualifying duties.

Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that there is a qualifying relationship between the U.S. and foreign entities, or that the U.S. and foreign entities had been doing business as of the filing date of the petition. As the appeal will be dismissed on the grounds discussed, 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.