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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

[Redacted]

File: EAC 00 094 51840

Office: Vermont Service Center

Date:

JUL 23 2001

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

[Redacted]

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center denied the nonimmigrant visa petition and the Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is again before the Associate Commissioner on motion to reopen/reconsider. The motion will be granted. The previous decisions of the director and the Associate Commissioner will be withdrawn and the petition will be approved.

The petitioner, a company engaged in international transactions, cargo shipping, storage and distribution, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director and the Associate Commissioner both determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily executive capacity.

On motion, counsel submits a brief and the petitioner submits additional evidence.

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(1)(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 (1)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (1)(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 dismissing the appeal, the Associate Commissioner found that the information provided by the petitioner described the beneficiary's duties only in broad and general terms, and there was insufficient detail regarding the actual duties of the beneficiary's assignment. The Associate Commissioner also noted the lack of information in the record concerning the petitioner's organizational structure and details regarding any employees of the petitioner's operations.

On motion, the petitioner submits a statement in response to the Associate Commissioner's findings. In this statement, the petitioner details the beneficiary's daily activities, the organizational structure of the petitioner, the hierarchy of the positions within the petitioner, and the names and job descriptions of the petitioner's employees. The petitioner also submits an organizational chart and evidence that it employs outside contractors.

Evidence submitted on motion is persuasive. The record supports a finding that the beneficiary works primarily as an executive with the petitioner.

In order to be found eligible for this nonimmigrant visa classification as an executive, the record must clearly show that the beneficiary *primarily* [emphasis added]:

- (A) Directs the management of the organization or a major component or function of the organization;
- (B) Establishes the goals and policies of the organization, component, or function;
- (C) Exercises wide latitude in discretionary decision-making; and
- (D) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

See. 8 C.F.R. 214.2(1)(1)(ii)(C).

The evidence submitted on motion shows that the beneficiary directs the management of the petitioner's operations through its employees and outside contractors. The evidence further establishes that the beneficiary establishes goals and policies,

exercises wide latitude in discretionary decision-making and functions as the top executive decision-maker within the organizational hierarchy. Accordingly, the petitioner satisfies its burden of proving that the beneficiary merits classification as a multinational executive.

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. The petitioner has sustained that burden.

ORDER: The prior decisions of the director and the Associate Commissioner are withdrawn and the petition is approved.