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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



File: WAC 99 176 50398 Office: California Service Center

Date: MAR 12 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:



Public Copy

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 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, Acting Director  
Administrative Appeals Office

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

The petitioner, a company involved in the manufacture, import and sale of outdoor equipment, tents, backpacks, etc., seeks to extend its authorization to employ the beneficiary temporarily in the United States as its product manager (backpacks). The director determined that the petitioner had not demonstrated that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel submits a brief.

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, North Pole (US) LLC, states that it was established in 1985 and that it is a wholly-owned subsidiary of Jinwoong Inc., located in Seoul, Korea. The petitioner declares 37 employees and a gross annual income of \$15,000. It seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of \$40,000.

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.

The petitioner describes the beneficiary's duties as follows:

She will still be working for the same international business organization that she worked for since 1991, when she started working with us in Korea, through her transfer to our office here in California in 1998. She will still continue with the same job duties: participate in overall product strategy, research and development requirements, analysis of market research, and manufacture coordination for new and emerging backpack products. She will communicate with overseas factories to provide cost & sampling information, ensure that resampling and recosting activities take place on buyers specifications; ensure that purchase orders are up to date through communications with manufacturing, warehouse & shipping divisions; coordinate technical product development, estimates of potential profits, and releases to production; provide financial and technical justification for product selections and definitions; prepare product development schedules for all phases of product development and introduction to market; and review progress continually through product life cycle to ensure attainment of objectives.

The petitioner submitted an organizational chart. The director stated in her decision that:

On that chart, it shows the beneficiary will not be supervising any employees. Therefore, it cannot be held that the beneficiary will be managing other managers or professional employees.

The director further determined that the beneficiary will be involved in the performance of the routine operational activities of the entity rather than in the management of a function of the business.

On appeal, counsel argues that the Service approved a prior petition for the beneficiary and therefore should approve the instant petition. The director, however, noted in her decision that:

The beneficiary has already had an initial I-129 filed and approved in her behalf. She was admitted to the U.S. as an "L1" on 04/13/99 and authorized to work for North Pole, Ltd. until 06/25/01. This petition was filed because the petitioning entity's, and their affiliates', parent entity had a change of ownership. A qualifying business relationship still exists. Unfortunately, that petition has been approved in error.

The additional information provided on appeal is not sufficient in overcoming the objections of the director. Counsel's merely restating portions of the Service's definition of a manager and executive is not sufficient in demonstrating the beneficiary's managerial and executive responsibilities. As stated by the director, the beneficiary will not be supervising any employees. It must be evident from the documentation submitted that the majority of the beneficiary's actual daily activities will be primarily executive or managerial in nature. The petitioner has provided no comprehensive description of the beneficiary's duties to establish this.

The petitioner has not demonstrated that the beneficiary has been or will be functioning at a senior level within an organizational hierarchy other than in position title. Based on the evidence submitted, it cannot be found that the beneficiary has been or will be employed in the United States in a primarily managerial or executive capacity.

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.