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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



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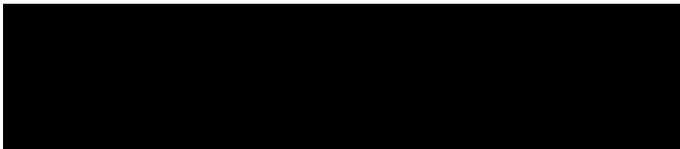
File: SRC 00 105 50324 Office: Texas Service Center Date:

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 data should be
prevent clearly unwaranted
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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner engages in commercial and residential real estate development. It seeks authorization to employ the beneficiary temporarily in the United States as its chief financial officer. The director determined that the petitioner had not established that the U.S. and foreign entities were engaged in the regular, systematic, and continuous provision of goods and/or services. The director also determined that the petitioner had not established that the beneficiary will be employed in a primarily managerial or executive capacity.

On appeal, counsel argues that the petitioner submitted evidence to the Service to document its ongoing business operations, and that the beneficiary is a manager.

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 first issue in this proceeding is whether the petitioner has established that the beneficiary 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.

After careful review of the petitioner's description of the beneficiary's job duties, it is determined that the beneficiary will be employed in a primarily managerial capacity. The petitioner has provided a detailed description of the beneficiary's duties that sufficiently demonstrates that the beneficiary will be primarily responsible for managing the financial functions of the petitioning organization. The petitioner has sufficiently demonstrated that the beneficiary will manage an essential function, exercise discretion over the day-to-day operations of that function, and will function at a senior level within the organization with respect to the function managed.

The evidence of record enables the Service to conclude that the beneficiary's primary role within the U.S. company fits the definition of managerial capacity noted in 8 C.F.R.

214.2(1)(1)(ii)(B). Therefore, the director's objections on this issue have been overcome.

The remaining issue in this proceeding is whether the petitioning and foreign organizations are doing business.

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

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

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.

The U.S. petitioning company was established in 1988. It claims to have four employees and a gross annual income of \$39,327.37. The petitioner states that although it was established in 1988, the company has been active only since 1997. The petitioner's 1999 corporate income tax return shows no gross receipts or sales and no salary and wages paid for that year. The company's 1998 corporate income tax return also shows no gross receipts or sales and no salary and wages paid. The record does indicate that some real estate transactions took place in March and July of 1999, but there is no indication that any consistent transactions took place throughout the year. The record as presently constituted is not sufficient in demonstrating that the U.S. entity is doing business on a regular, systematic and continuous basis.

Further, the record contains insufficient evidence to demonstrate that the foreign company is doing business. Although the record contains photos of various properties, and a balance sheet as of

December 31, 1998 showing a "profit/loss for the period as 179,092,75," it is not adequate evidence to demonstrate that the foreign company is conducting regular, systematic, and continuous business activities.

On appeal, the petitioner has provided no additional evidence to overcome the director's finding that the U.S. and foreign entities are not doing business. For this reason, the petition may not be approved.

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.