



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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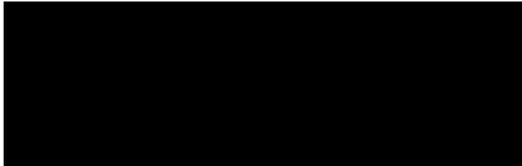
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File: WAC 99-161-51157 Office: California Service Center Date: **JAN 03 2002**

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

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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was originally approved by the Director, California Service Center. Upon further review, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke the approval of the visa petition, and his reasons therefore, and ultimately revoked the approval of the petition. This matter is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition remanded for further consideration.

The petitioner is described as an import and export corporation. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its vice president and staff planning manager. The director determined that the petitioner had not established that a qualifying relationship exists between the United States petitioner and the foreign organization.

On appeal, counsel for the petitioner submits a letter and requests oral argument.

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.

On review, the record as presently constituted indicates that, the Service, through computer error, approved the petition on September 29, 1999, and that the director subsequently issued a Notice of Intent to Revoke, dated December 19, 1999. The director stated that:

A review of the proposed position indicates that the position does **not** establish responsibilities which are primarily executive or managerial in nature. The petitioner has not demonstrated that the beneficiary presently has a subordinate staff of professional, supervisory, or managerial employees to perform the services of the corporation...The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary will be managing the organization or managing a department, subdivision, function, or component of the corporation...Further, the evidence of record does not

establish that the majority of the beneficiary's duties will be primarily directing the management of the organization...

The director requested additional documentation. The petitioner responded to that request.

On April 28, 2000, the director revoked the approval of the petition. In his decision, the director stated:

You were accorded thirty (30) days to offer evidence in rebuttal. You were also informed that failure to respond to the notice within the time allotted would result in the revocation of the petition. To date, this office is not in receipt of any evidence in rebuttal to the proposed revocation of approval of the petition.

Therefore, in accordance with provisions of Title 8, Code of Federal Regulations, part 205.2 [sic], the approval of the petition is hereby revoked as of the date of the notice. [April 28, 2000]

On July 6, 2000, the Director, California Service Center, requested that the Administrative Appeals Unit (AAU) remand the petition for further consideration. The director cited, in pertinent part,

Service records show that on June 18, 1999, a request for additional evidence was sent to the petitioner, however, the petitioner did not respond to that request.

On July 12, 1999, petitioner was given a second opportunity to respond to another additional request. Service records show that the petitioner responded to that request on September 22, 1999. A complete and thorough search of the evidence was conducted; however, the requested evidence was not able to be found.

The decision of the director will be withdrawn.

The petition will be remanded for the purpose of determining if a qualifying relationship continues to exist pursuant to 8 C.F.R. 214.2(l)(1)(ii)(G) and if the alien is otherwise eligible for classification under section 101(a)(15)(L) of the Immigration and Nationality Act.

It is noted that the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity pursuant to 8 C.F.R. 214.2(l)(1)(ii)(B)&(C).

In these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision of April 28, 2000, is withdrawn. The petition is remanded to the director for review and entry of a new decision, which if adverse to the petitioner, shall be certified to the Associate Commissioner for review.