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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

File: LIN-01-034-51085 Office: Nebraska Service Center Date: APR 11 2003

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)

ON BEHALF OF PETITIONER:

PUBLIC COPY

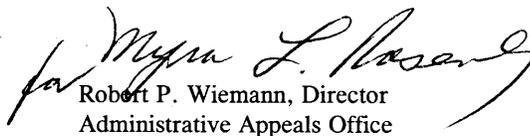
INSTRUCTIONS:

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a wholesaler and retailer of building supplies. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel rebuts the director's findings.

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.

Regulations at 8 C.F.R. § 214.2(l)(14)(ii) state 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 United States petitioner was established in 1999 and states that it is a subsidiary of [REDACTED] located in

Bandung, Indonesia. The petitioner seeks to extend the employment of the beneficiary for a three-year period at an annual salary of \$45,000.

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.

In his decision, the director noted that it appeared that the beneficiary was the sole employee of the United States entity. The director further states, in pertinent part, that:

As the U. S. entity is not a new office, and is well beyond the start-up phase, the petitioner is obligated to demonstrate that at the time of filing the beneficiary would be employed in a managerial or executive position.

As the sole employee, the beneficiary's primary assignment cannot be supervising a subordinate staff of professional, managerial, or supervisory personnel. The Service is also not persuaded that operating a company in its entirety constitutes managing an essential function within an organization as set forth by the Act.

On appeal, counsel states in part that:

At the present time [REDACTED] (the United States entity) is still searching [SIC] to hire three qualified and experienced managers to staff the purchasing department, the administration department and the transportation department. Meanwhile, the foreign company with a staff of 19 employees is assisting the beneficiary with performing the daily management function and menial tasks of [REDACTED] via the Internet. Currently, as the sole executive officer, the beneficiary's primary assignment is to direct the management function of [REDACTED] with the assistance of employees from the foreign parent company.

[The beneficiary] is currently the President of [REDACTED] [The beneficiary] has sole control over the **management function** (emphasis added) of [REDACTED]. His duties at [REDACTED] include creating business plans and directing [REDACTED]. He meets and negotiates with U.S. suppliers in the purchase of building materials. He has complete authority to finalize all agreements and contracts. He will have final authority over the department managers of [REDACTED] when they are recruited and hired. Here is a summary of his allocation of duties as President of [REDACTED]

Business Planning:	30%
Business Negotiations:	35%
Financial Operations:	20%
Approving Contracts and Documents:	15%

The record indicates that the beneficiary was appointed president of the U.S. entity on November 1, 1999. The record further indicates that the beneficiary was granted L-1A status from November 1, 1999 through October 31, 2000. The present petition for an extension was filed on November 16, 2000, more than a year later. Service regulations require a new office to demonstrate viability after the initial one-year period. 8 C.F.R. § 214.2(l)(14)(ii).

Counsel's argument that the petitioner currently uses the services of employees of the parent company to perform the day-to-day tasks is not persuasive. Although counsel indicates that the petitioner is seeking additional managerial staff, the petitioner has proffered no evidence of advertised job notices having been placed in any newspapers, no documentation indicating the petitioner has made contact with recruiting firms, nor has the petitioner addressed any specific plans for hiring or recruitment. Additionally, the record contains no evidence of the allocation of any funding having been designated for hiring additional employees. The record clearly does not establish that the U.S. entity contains the organizational complexity to support a primarily managerial or executive position.

When managing or directing a function, the petitioner is required to establish that the function is essential and the manager is in a high-level position within the organizational hierarchy, or with respect to the function. The record must demonstrate that the beneficiary will be primarily managing or directing, rather than performing, the function. Based on the information contained in the record, there are no subordinate employees, the Internet notwithstanding, to provide the goods and services of the United States operation to its customers/clients. The record does not reflect that the U.S. company employs any salespersons even though it has been doing business for over a year and it experienced roughly \$165,000 in gross revenues in 1999.

Upon review of the record, the petitioner has not established that the beneficiary functions or will function at a senior level within an organizational hierarchy other than in position title. There is no comprehensive description of the beneficiary's duties that persuasively demonstrates that the beneficiary has been and will be

performing in a primarily managerial or executive capacity. There is no evidence to establish that the petitioner employs a subordinate staff of professional, managerial, or supervisory personnel who relieve the beneficiary from performing nonqualifying duties. The record contains no comprehensive description of the beneficiary's duties that demonstrates that the beneficiary has been and will be managing or directing the management of a department, subdivision, function, or component of the petitioning organization. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proof 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.