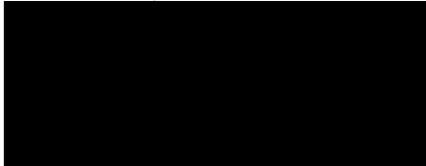


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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass., 3/F  
Washington, DC 20536



File: SRC 02 269 52744

Office: TEXAS SERVICE CENTER

Date: APR 22 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:



**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

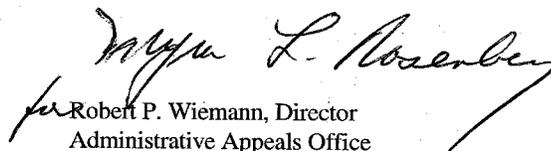
**INSTRUCTIONS:**

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 Bureau of Citizenship and Immigration Services (Bureau) 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 Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a real estate development company that seeks to continue to employ the beneficiary temporarily in the United States as its vice president and chief executive officer for a period of three years. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel explains that the petitioner has invested over \$840,000 in commercial real estate properties during its first year of operation and is searching for additional real estate investment opportunities. Counsel states that the petitioner has sufficient funds to remunerate the beneficiary and that nearly all of the beneficiary's duties are executive and managerial in nature. Counsel further states that the beneficiary will be in charge of finding and acquiring additional real estate properties for investment and management and will be in the business of developing these properties. Counsel indicates that under Georgia law, the vice president and chief executive officer of the petitioning company is, by definition, an executive officer of the company and has the full authority to commit for the company, secure financing, negotiate contracts, and do banking and marketing, all of which counsel claims are executive and managerial functions.

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.

The regulations at 8 C.F.R. § 214.2(1)(3) state that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

The 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 issue in this proceeding is whether the petitioner has established that the beneficiary would be employed in a qualifying managerial or executive capacity in the United States.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "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:

The term "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.

Counsel describes the beneficiary's job duties in the United States as follows:

1. To establish the U.S. corporation and operations of the company;
2. Research the establishment of the corporation under appropriate state laws;
3. Establish banking relationships;
4. Recruitment, hiring and training of staff;
5. Planning and marketing research;
6. Meet with contractors and architects, and approve designs;
7. Negotiate for and establish leases;
8. To serve as the Executive Vice-President and Chief Executive Officer of the U.S. subsidiary;
9. To be in charge of marketing, expansion, and growth of the company;

10. To have full authority to negotiate for and enter into binding agreements on behalf of the company;
11. To be responsible for all corporate finance, banking, management and accounting for the company;
12. Budgeting;
13. To exercise wide latitude in decision-making on behalf of the company; and
14. To have full executive and management control of the company and all of its operations.

On appeal, counsel's argument relies, in part, on a federal district case involving an immigrant petition, *Mars Jewelers, Inc. v. INS.*, 702 F. Supp. 1570 (N.D. Ga. 1988). A federal district court case has no binding precedential value in the instant case. *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Moreover, the statute has since been amended and sets forth explicit definitions of managerial and executive capacity on which the director relied. Also, counsel refers to unpublished decisions and argues that cases have been approved where an executive or manager did not manage subordinate staff. However, counsel has furnished no evidence to establish that the facts of the instant case are in any way analogous to the unpublished cases cited. Simply going on record without supporting documents is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, while 8 C.F.R. § 103.3(c) provides that Service precedent decisions are binding on all Service employees in the administration of the Act, unpublished decisions are not similarly binding.

As indicated above, the record shows that the petitioner was incorporated on September 4, 2001. This visa petition was filed on September 16, 2002.

When the visa petition was filed, Convrgnt America, Inc. employed three persons, its president, the beneficiary and an administrative assistant. The petitioner indicated that the president divides his time between Dubai and the United States company. The petitioner also indicates that the beneficiary will be responsible for increasing the sales of the new company to over a \$2.5 million level and that she will formulate business plans for construction, particularly with regard to expanding the business.

After the petition was filed, the beneficiary was joined by two other employees who now work for the United States company as its financial and loan analyst and as its sales and marketing researcher. Counsel indicates that the beneficiary functions as the senior-most executive of the company in the United States based on her dual role as vice-president and chief executive.

In this case, the descriptions of the beneficiary's job duties are insufficient to warrant a finding that the beneficiary will be employed in an executive or managerial capacity. At the time of filing, the beneficiary was occupying the number two job in a three person office. Based upon the record, even with the two additional employees, the petitioner has not provided evidence that the beneficiary will be managing a subordinate staff of professional, managerial or supervisory personnel who relieve her from performing non-qualifying duties. The beneficiary is the individual performing the necessary tasks for the ongoing operation of the company, rather than primarily directing or managing those functions through the work of others. 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.