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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.
BCIS, AAO, 20 Mass., 3/F
Washington, DC 20536



APR 22 2003

File: SRC 02 061 51601 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)

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 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 Acting Director, Texas Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an import/export firm that seeks to employ the beneficiary in the United States as a classification clerk. The director determined the petitioner had not established that the beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, the petitioner's representative forwards a letter from the petitioner further explaining the duties that the beneficiary would perform.

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(1)(3) states 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 first issue in this proceeding is whether 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:

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.

The petitioner describes the beneficiary's proposed job duties in the United States as follows:

Mr. [REDACTED] will be in charge of the Merchandise Classification Department, which is a very important function. All of the merchandise coming into the country or exported is subject to an import or export tariff that requires a special permit to be imported into this country. The applicant in this case has to follow the laws to see if the merchandise can be cleared for import and export to Mexico.

Applicant also has under his control 4 other employees that assist him and which he controls. These persons are the ones that open up the boxes and containers to

be inspected and are also responsible to relate to the applicant, the Merchandise Classifier, the type of merchandise being inspected. They make sure that the quantities are verified by the shipping invoice or packing slip and to make sure that all merchandise is repacked properly and shipped to its designated destination. The applicant also has the wide discretion to hire and fire these 4 persons that are under him. Some merchandise they have imported or exported does not require [sic] permit to be shipped or received, but the classifier has the responsibility to account for all shipments and the 4 employees assist him in completing this task. He is also in charge of recommending to the business owner promotions and leave slip authorizations to these 4 employees that he supervises and controls.

Mr. [REDACTED] exercise [sic] wide discretion based on his knowledge and using the tariff laws that apply in preparing the documentation for export. He also uses his discretion in making decisions to see that the shipments are ready to cross. This information is also relayed to his immediate supervisor who is the owner of Computramite Forwarding Inc.

The petitioner's assertions concerning the managerial and executive nature of the beneficiary's future duties are not persuasive. Counsel's description of the beneficiary's proposed job duties is not sufficient to warrant a finding of managerial or executive job duties. It is noted that the assertions of counsel (or a representative) do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 BIA 1980). Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In this case, the evidence submitted is insufficient to establish the beneficiary will be acting in a managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary will be managing or directing the management of a function, department, subdivision or component of the company upon his entry into the United States. The petitioner has not shown that the beneficiary will be functioning at a qualifying senior level within an organizational hierarchy.

Beyond the decision of the director, the record is not persuasive and does not contain sufficient documentation to establish that a qualifying relationship exists between the petitioner and a foreign firm, corporation or other legal entity. Additionally, the petitioner has not submitted sufficient evidence to establish that the beneficiary has been employed abroad in a qualifying managerial or executive capacity abroad. As the appeal will be

dismissed on the grounds discussed, these issues need not be examined further.

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.