

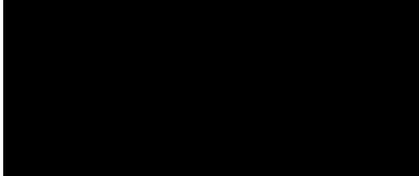
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D. C. 20536



FILE: SRC 02 030 50776 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



DEC 12 2003

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:



**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 Citizenship and Immigration Services (CIS) 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, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner claims to be a mineral industry consultancy business. The beneficiary was originally granted L-1A nonimmigrant status for a one-year period in order to open a new office. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in a managerial or executive capacity.

On appeal, petitioner disagrees with the director's determination and asserts that the evidence submitted is sufficient to establish that the beneficiary's duties will be primarily managerial or executive in nature.

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 regulation at 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.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad

with a qualifying organization with the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended serves in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) states 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 (1)(1)(ii)(G) of this section;
- B) Evidence that the United States entity has been doing business as defined in paragraph (1)(1)(ii)(H);
- 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.

According to the documentary evidence contained in the record, the petitioner was incorporated in 1999 as a mineral industry consultancy business. The petitioner states that the U.S. entity is a branch of [REDACTED] located in Guyana. The petitioner declares less than five employees and \$64,571 in gross income for the first six months of 2001. The petitioner seeks to extend its opportunity

to employ the beneficiary as president for a period of three years, at a weekly salary of \$1,400.

At 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:

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.

In the petition, the petitioner stated that the beneficiary's proposed job duties will be to establish a branch of the company in America, and to consolidate the relationships initiated by the parent company. The petitioner also stated that the beneficiary would be responsible for overseeing the supply of mining equipment to developing countries.

In a letter of support dated September 21, 2001, the manager of TEAMS describes the beneficiary's job duties as follows:

[The beneficiary] is employed as the General Manager of [REDACTED] in Guyana and has been Project Leader on a joint venture World Bank project in Ghana. In this latter position, he has spearheaded the implementation of a testing program of new and improved mining and processing techniques and equipment in the small-scale mining sector in Ghana. This has involved several equipment pieces and consumables obtained from the USA.

[The beneficiary] will continue running TEAMS, Inc. on a temporary basis in the position of President and Resident Manager. In this position, he will be responsible for consolidating the relationships initiated by TEAMS for the supply of small adaptable equipment for use by small-scale miners in developing countries and for seeking additional professional

skills to execute innovations in the same direction-adapting available tools for widespread use.

[The beneficiary] has formal training in mining engineering and mineral processing and has twenty years practical experience in various disciplines in the mining and minerals sector. He has managed and spearheaded innovations in exploration, mining plant operations, construction, equipment specification and use and has a good insight on working technologies and their adaptability to the current low-metal price environments. He has successfully implemented several viable projects.

In the beneficiary's resume, his services as project leader for the period covering 1998-2000 are listed as follows:

Responsible for installation, testing and demonstration of better performing appropriate, and environmentally responsible techniques/methods and equipment for artisanal and small scale mining (ASM); demonstrated expertise in appropriate equipment design, fabrication and use for improved economics through local construction of equipment and techniques for hard rock and alluvial ores treatment.

In response to the director's request for additional evidence, the petitioner submitted a list of all employees for TEAMS, Inc., which consisted of the beneficiary and an accounting firm. The petitioner also submitted a copy of its 2000 Corporate Income Tax Return.

The director determined that the record did not establish that the beneficiary was engaged in primarily managerial or executive duties in the United States. The director also noted that based upon the evidence received, the majority of the beneficiary's work time would be spent in the non-managerial, day-to-day operations of the business.

On appeal, the petitioner disagrees with the director's decision and submits evidence in support of extending the L-1A nonimmigrant visa status of the beneficiary in the managerial or executive category. The petitioner asserts that based upon the recent growth of the parent company, the U.S. entity will be the main operating and marketing office. The petitioner continues by stating that the U.S. branch will establish the objectives, goals and operation strategies to help in implementing the directions

for effective production and success of the acquired projects. The petitioner also maintains that most of the projects conducted by the petitioner are administrative in nature and involve strategies to implement the company's operations. The petitioner submits documents pertaining to shipping and receiving of mining materials. The petitioner continues by stating that the beneficiary continues to carry out his executive duties and assigns the day-to-day management operations to outside contractors, agents and the beneficiary's wife as secretary. The petitioner also explains that the outside contractors are not listed as employees because their positions are temporary in nature, and that the secretary is not listed as an employee because she is not supposed to receive a salary as an L-2 dependent.

The petitioner's assertions are not persuasive. In evaluating the claimed managerial or executive duties of a beneficiary, CIS will look first to the petitioner's description of the beneficiary's job duties. 8 C.F.R. § 214.2(1)(3)(ii). The information provided by the petitioner describes the beneficiary's job duties only in broad and general terms. There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. The following duties are without any context in which to reach a determination as to whether they would be qualifying: responsible for establishing a branch office; consolidating the relationships initiated by the parent company; and overseeing the supply of mining equipment to developing countries. The use of the position title "president" is not sufficient to demonstrate that the beneficiary will be engaged primarily in executive duties while employed by the U.S. entity.

The record contains insufficient evidence to demonstrate that the beneficiary will be employed in a primarily managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that he will be directing the management of the organization or a major component or function of the organization, that he will be establishing goals and policies, or that he will be exercising a wide latitude in discretionary decision-making. There is no evidence submitted to show the number of hours to be attributed to each of the beneficiary's duties. The petitioner claims that the beneficiary will be president of the U.S. entity. However, rather than managing a major department, subdivision, function, or component of the organization, it appears that he will actually continue to perform all the services for the business. As case law confirms, an employee who primarily performs the tasks necessary to produce a product or to provide a service is not

considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Further, the petitioner's evidence is not sufficient in establishing that the beneficiary will be managing a subordinate staff who will relieve him from performing non-qualifying duties. The petitioner has not provided sufficient documentation to substantiate the independent contractors, agents, or the secretary's employment with the U.S. entity. The petitioner has failed to provide detailed descriptions or job duties of the U.S. entity's employees. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title.

In review of the evidence presented, even if it can be shown that multiple employees were working for the U.S. entity on a full-time basis, the petitioner has not provided evidence to demonstrate that the beneficiary will be managing a subordinate staff of professional, managerial or supervisory personnel who relieve him from performing non-qualifying duties. Based on the evidence contained in the record, it appears that the beneficiary will continue to perform the necessary services for the ongoing operation of the company, rather than primarily directing or managing those functions through the work of others.

Based upon the total record, it cannot be found that the beneficiary will be employed in a primarily managerial or executive capacity. Consequently, the appeal will be dismissed.

Beyond the decision of the director, the minimal documentation of the parent's and the petitioner's business operations raises the issue of whether a qualifying relationship between the petitioner and the foreign entity still exists, and whether the foreign entity will continue doing business during the alien's stay in the United States. As the appeal will be dismissed, 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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.