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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. Ave., 3rd Floor  
Washington, D.C. 20536



JUL 07 2003

File: WAC 01 096 51248 Office: CALIFORNIA 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).

IN BEHALF OF PETITIONER: Self-represented

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

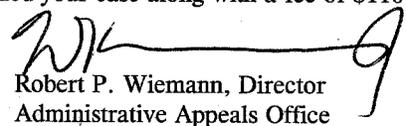
**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office 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 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 which 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, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a manufacturer, importer, and exporter of pharmaceutical and laboratory products. It seeks to employ the beneficiary temporarily in the United States as general manager of export of its new office. The director determined that the petitioner failed to provide a valid lease establishing that a sufficient physical premises had been secured to house the U.S. operation. The director also determined that the petitioner had not demonstrated that the beneficiary has been employed for one continuous year by the parent organization in a capacity that is managerial, executive or involves specialized knowledge.

On appeal, the petitioner submits additional documentation in an effort to overcome the director's objections.

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 performed.

8 C.F.R. § 214.2(1)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

A) Sufficient physical premises to house the new office have been secured;

B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The petitioner does not indicate when it was established, but indicates that it is a branch of Neumonte Distributors Co., Ltd., located in the Philippines, and Neumonte U.S.A. Inc., located in the United States. The petitioner seeks to employ the beneficiary in the United States for an undisclosed period of time at a weekly salary of \$450.

The first issue in this proceeding is whether the petitioner has secured sufficient physical premises to house its business operation in the United States.

In support of the petition, in regards to the above issue, the petitioner submitted a photocopy of a lease executed on January 15, 2001. It is noted that the lease appears to be altered.

On March 26, 2001 the director issued a notice requesting, in part, that the petitioner submit evidence establishing that it had secured sufficient physical premises.

In response to the above request, the petitioner submitted the original lease of which portions were whited out and appear to have been altered.

The director concluded that the lease submitted did not constitute adequate evidence that the petitioner had secured a sufficient

physical premises for its operation because the lease had been altered with white-out, but did not contain any initials approving the corrections.

On appeal, the petitioner submitted an original lease, executed on October 1, 2001. While the lease submitted appears to be valid, the petitioner submitted no evidence establishing that the lease previously submitted in response to the director's request was also valid. Pursuant to 8 C.F.R. § 103.2(b)(12) states, "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." In the instant case, the petition was filed in January 2001. Thus, the burden is on the petitioner to establish that it had secured sufficient business premises by the time it filed its petition. However, the petitioner failed to address the director's objection regarding the authenticity of the original lease; moreover, and the valid lease subsequently submitted was executed 10 months after the petition was filed. Therefore, it cannot be concluded that the petitioner secured sufficient physical premises to house its business. For this reason the petition cannot be approved.

The other issue in this proceeding is whether the beneficiary has the qualifying one year of employment 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.

The petitioner provided the following description of the beneficiary's duties for the past three years:

Managed the company by supervision, trained, hired, fired employees, perform in carrying the operation [sic] particularly in financial matters by issuance of letters of credit locally and abroad for an [sic] importation of medical and dental supplies.

The petitioner also submitted a letter from the treasurer of the overseas entity authorizing the beneficiary to set up the U.S. branch and to "promote the products and financial stability of the company." The letter further states that the beneficiary has been employed as the foreign company's import and export general manager since June 1992.

In the director's request for additional evidence, the petitioner was instructed to submit a more detailed description of the beneficiary's duties abroad. The petitioner was asked to provide a list of the beneficiary's subordinates, their job titles, and position descriptions, as well as a percentage of time the beneficiary spent performing each of his listed duties.

In response to the above request, the petitioner resubmitted the letter from the treasurer of the overseas entity. The petitioner also submitted a photocopied page of the foreign entity's payroll for the period covering December 1 to 15, 1998. Although the beneficiary's name and position title are both listed in that

document, this is insufficient proof that the beneficiary had been working for the overseas entity for at least one continuous year in a qualifying position. While the petitioner submitted an additional letter with brief descriptions of the beneficiary's proposed job duties and the position titles and job duties of his subordinates in the United States, the same information was not provided regarding the beneficiary's job duties for the company abroad.

The record contains insufficient evidence to demonstrate that the beneficiary has been or will be employed in a managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties abroad that would demonstrate that the beneficiary has been managing the organization, or managing a department, subdivision, function, or component of the company. The petitioner has not shown that the beneficiary has been functioning at a senior level within an organizational hierarchy. Further, the petitioner's evidence is not persuasive in establishing that the beneficiary has been managing a subordinate staff of professional, managerial, or supervisory personnel who relieved him from performing nonqualifying duties. Based on the evidence submitted, it cannot be found that the beneficiary has been employed in a primarily executive or managerial capacity. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. See section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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