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

ADMINISTRATIVE APPEALS OFFICE  
BCIS, AAO, 20 Mass, 3/F  
Washington, DC 20536



File: EAC 02 042 54961

Office: VERMONT SERVICE CENTER

Date:

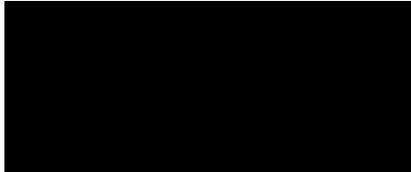
**MAY 14 2003**

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:



**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.

*Robert P. Wiemann*  
for 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 engaged in the acquisition of property and construction. It seeks to continue to employ the beneficiary temporarily in the United States as a manager. The director determined that the petitioner had not established that the beneficiary possesses specialized knowledge or that the beneficiary had been or would be employed in the United States in a specialized knowledge capacity.

On appeal, counsel explains that an extension of the beneficiary's status as a manager or executive in L-1A status was filed in June 2001 and a timely response was submitted after an evidence request was received from the director. Counsel indicates that the L-1A visa petition was denied on November 5, 2001 and that this request for L-1B was submitted because that decision indicated that L-1A and L-1B status could not be considered in one petition.

Counsel states the beneficiary is the majority owner and chief executive officer of the petitioning firm. Counsel further states that a previous petition requesting managerial or executive status for the beneficiary was denied by the director. Counsel explains that because the beneficiary's presence in the United States is critical to the functioning of the company, this petition is being filed requesting a nonimmigrant visa based upon the specialized knowledge category.

Counsel argues that the director's decision repeatedly mischaracterizes the nature of the business, fails to consider many of the exhibits submitted in support of the petition, and refers to the function of the beneficiary as a supervisory general contractor. Counsel explains that this is not a case where the business of the petitioner is providing the service of "general contracting." Counsel continues that in fact, as demonstrated throughout the exhibits, the beneficiary is responsible for all aspects of the company's operations including all financial decisions with which he is familiar because of his roles as majority owner and executive officer of both the foreign and U.S. companies. Counsel further explains that at present, the petitioner is in the business of buying property and building new housing or rehabilitating existing housing. Counsel further argues that this critical difference was never acknowledged in the director's decision.

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 (iii) executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

8 C.F.R. § 214.2(1)(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) 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 possesses specialized knowledge, and whether he had been or would be employed in a capacity that involves specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

An alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

8 C.F.R. § 214.2(1)(1)(ii)(D) states:

*Specialized Knowledge* means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The petitioner's business plan indicates that the company has assigned the beneficiary as its on-site general and construction manager. In that role, he oversees all managerial functions of the construction projects. The petitioner provides the following information concerning the duties the beneficiary will perform in the United States:

Mr. [REDACTED] will continue to serve as Chief Executive Officer and build the U.S. business.

The petitioner's assertions concerning the specialized knowledge possessed by the beneficiary are not persuasive. The description of the beneficiary's job duties and the supporting documentation indicate that the beneficiary of this petition is an experienced business owner and has knowledge of the construction business. The petitioner has not articulated any duties of the beneficiary that might be considered specialized. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. The petitioner has not shown that the beneficiary has an advanced level of knowledge and expertise in the organization's processes and procedures. On review of the record, the petitioner has not established that the beneficiary has been employed and will be employed in the United States in a specialized knowledge capacity, or that the beneficiary possesses specialized knowledge. 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.