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

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



File: SRC 02 042 55678

Office: TEXAS 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.


for 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 distributes computer equipment, software, hardware and electronic products. It seeks to continue the employment of the beneficiary in the United States as its financial manager. The director determined that the petitioner had not established that it had been doing business for a full year, that the foreign business was currently doing business, and that the beneficiary would be acting in primarily a managerial or an executive capacity. The director also determined that the petitioner had not established that the beneficiary had been employed abroad in a primarily managerial or executive capacity. However, this is not an issue for an extension and should have been addressed in the original petition. This issue will not be discussed in this proceeding.

On appeal, counsel states that the petitioner has been in business for over one year. Counsel further states that appropriate documentation has been submitted supporting the beneficiary's role as a management employee, including the assertion that he is in a supervisory capacity. Counsel submits documentation to establish that the foreign entity was doing business when the visa petition was filed.

On appeal, counsel has submitted documentation establishing that the petitioner had been doing business for more than one year and that the foreign business was actively engaged in business on the date the visa petition was filed thereby overcoming two of the director's objections to approval.

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.

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 issue to be addressed 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:

"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 describes the beneficiary's job duties as follows:

During the past nine months that Mr. [REDACTED] joined Cecom, he has been responsible for the overall continuing development of the subsidiary. His duties and responsibilities have included the hiring and firing of all personnel. Revision of all financial contracts and business relationships with suppliers, in order to assess the viability of these contracts and business relationships with suppliers, in order to assess the viability of these contracts. He has also had total discretionary authority to reduce costs, so as to improve profits. His years of management and executive level experience in this field, has given him the latitude to make these decisions without having to consult with any other person or entity. His position is at the executive level since he formulates policies and has the ultimate discretionary authority to make necessary changes in the structure of the business. His functions with the organization are purely executive since he performs only those executive functions and leaves the daily tasks to the company employees. Mr. Gabes has also had the discretionary authority to seek the purchase of any existing business and/or enter into negotiations of such an entity. His executive level position permits him to do so and therefore create a value for the subsidiary and parent company.

The petitioner was incorporated in the State of Florida on October 19, 2000. The record shows that the petitioner paid officer compensation of only \$12,200 and salaries and wages of only \$16,000 for a period of one year beginning November 1, 2000 and ending October 31, 2001. As of the filing date of November 16, 2001, four persons were employed by the firm including the branch manager, financial manager a sales manager and an administrative secretary. The record shows that two sales persons were added to the staff on March 1, 2002.

The petitioner's description of the beneficiary's job duties is insufficient to warrant a finding that the beneficiary will be employed in a managerial capacity. The beneficiary's duties as

outlined are vague and general and do not provide comprehensive data about the beneficiary's daily activities. It appears, at most, the beneficiary will be performing operational rather than managerial duties. The petitioner has provided insufficient evidence to establish that the beneficiary will be managing or directing the management of a function, department, subdivision or component of the company.

Based upon the record, the petitioner has not provided evidence that the beneficiary will be managing a subordinate staff of professional, managerial or supervisory personnel who relieve him from performing non-qualifying duties. Rather, 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.

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. See 8 C.F.R. § 214.2(1)(1)(ii)(G). As the appeal will be dismissed for the reasons stated above, this issue 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.