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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 2<sup>nd</sup> Fl., 3/F  
425 Eye Street, N.W.  
Washington, D.C. 20536

**DA**

[REDACTED]

OCT 20 2003

File: LIN 00 123 51446 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

[REDACTED]

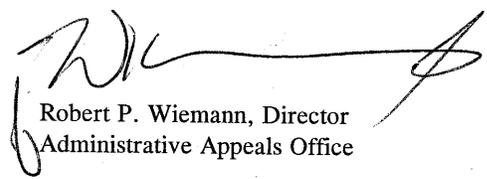
**INSTRUCTIONS:**

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 which 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 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 Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is described as an international full-service wholesale travel provider. It seeks authorization to employ the beneficiary temporarily in the United States as a product manager. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. business entity and the foreign business entity. Additionally, the director determined that the petitioner had not established that the beneficiary's duties are primarily managerial or executive in nature.

On appeal, counsel submits new evidence regarding the ownership of the company and the beneficiary's position and proposed job duties.

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(l)(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 (l)(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 a qualifying relationship exists between the petitioning company and the claimed foreign company.

Bureau regulations at 8 C.F.R. § 214.2(l)(ii)(G) define the term "qualifying organization" as follows:

*Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

8 C.F.R. § 214.2(1)(ii)(I) states:

*Parent* means a firm, corporation, or other legal entity which has subsidiaries.

8 C.F.R. § 214.2(1)(ii)(J) states:

*Branch* means an operating division or office of the same organization housed in a different location.

8 C.F.R. § 214.2(1)(ii)(K) states:

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

8 C.F.R. § 214.2(1)(ii)(L) states, in pertinent part:

*Affiliate* means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner, [redacted] located in Seattle, Washington, stated in its initial petition that it is a joint venture with travel agencies in Australia, New Zealand and the United States. There are several businesses that created the petitioner.

[redacted] an Australian corporation, [redacted] a Washington corporation [redacted]; [redacted] a [redacted] and [redacted] a New Zealand corporation [redacted]

To explain this business arrangement, counsel submitted a document that described that three individual parties were joint owners of the petitioner. These three parties and their ownership interests were listed as: [redacted] (49%), [redacted] (50%), and [redacted] (1%).

The director requested documentary evidence to establish the qualifying corporate relationship between the U.S. business entity and the foreign business entity which employs the beneficiary.

In response to the request for evidence, the petitioner submitted a copy of the [redacted] of the agreement, in pertinent part, states:

- (d) Allocation of profits, losses and control shall be in the following proportions, unless otherwise modified by the Members:

[redacted]	48%
[redacted]	50%
[redacted]	1%
[redacted]	1%

- (e) Ownership will be in the form of Interests which will be evidenced be Certificates of Membership issued in the following proportions:

[redacted]	48%
[redacted]	50%
[redacted]	1%
[redacted]	1%

Counsel also submitted the First Amendment to the [redacted] Agreement, dated August 15, 1997. This amendment document evidences [redacted] transfer of its interest in the petitioning company to [redacted]. Counsel explains that this agreement and its amendment establish common ownership and control between the foreign entity and the U.S. entity.

The director denied the petition noting that the petitioner's response to the request for additional evidence did not include

evidence that established common ownership and control, therefore a qualifying relationship did not exist at the time of filing the instant petition. The director concluded that the evidence provided does not demonstrate that either [REDACTED] has control over the petitioner, [REDACTED]

On appeal, counsel provides new evidence of ownership and states [REDACTED] is now the parent company and is the 100% owner of [REDACTED] the U.S. subsidiary. This new evidence consists of a copy of a Sales Agreement, which states that on October 27, 2000, the ownership of [REDACTED] significantly changed when ownership interest of Pacifica and that of [REDACTED] was purchased by and transferred to [REDACTED]

However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. The current petition was filed on March 23, 2000. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). For this reason, the petition may not be approved. Consequently, it must be concluded that the petitioner has failed to demonstrate a qualifying relationship with a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G), at the time of filing the instant petition.

The second issue in this proceeding is whether the beneficiary's duties have been and will be primarily managerial or executive in nature.

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 director requested that the petitioner submit evidence to establish that the beneficiary qualifies under the four criteria stated for either a managerial capacity found in section 101(a)(44)(A) of the Act or executive capacity found in section 101(a)(44)(B) of the Act. The petitioner provided a statement listing the current and future job duties of the beneficiary. The petitioner states that the beneficiary has the "responsibility for managing the employee group assigned to negotiating rates, updating company administrative database, liaising with industrial partners, creating itineraries for southwest pacific travelers." The petitioner stated that the beneficiary oversees and directs the activities of three to five employees and coordinates the entire southwest travel group.

The director determined that the petitioner had not provided sufficient evidence to demonstrate that the beneficiary's duties are primarily managerial or executive in nature. The director found that the petitioner failed to demonstrate that the beneficiary supervises and controls the work of other supervisory, professional, or managerial employees.

On appeal, counsel states that the petitioner will now appoint the beneficiary to the position of Vice President of Operations

because of personnel changes in the U.S entity. 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 as stated in 8 C.F.R. § 103.2 (b) (12). As stated above, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.* The petitioner may not make material changes to a petition that has already been filed in order to make an apparently deficient petition conform to Bureau requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm. 1998). If the petitioner would like for the Bureau to consider the new ownership structure or the beneficiary's new position, the petitioner may file a new petition.

The record indicates that the beneficiary's job duties include managing the employee group assigned to negotiating rates, updating company administrative database, liaisons with industrial partners, and creating itineraries for southwest pacific travelers. The petitioner states that in this capacity, the beneficiary has the responsibility for overseeing and directing the activities of three to five employees. Based on the job description provided by the petitioner, the beneficiary appears to be primarily a first-line supervisor who plans, schedules, and supervises the day-to-day work of nonprofessional employees. As clarified in 8 C.F.R. § 214.2 (1), "a first line supervisor is not considered to be acting in a managerial capacity merely by the supervisory duties unless the employees supervised are professional."

Based on the evidence provided, it cannot be found that a qualifying relationship existed between the U.S. petitioner and the overseas entity at the time the initial petition was filed. Additionally, based on the evidence provided, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. The appeal must therefore be dismissed.

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.