



U.S. Citizenship  
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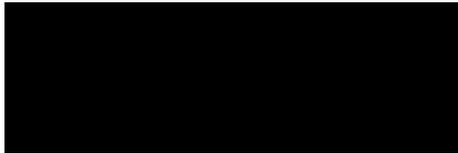


FILE: LIN 02 121 52435 Office: NEBRASKA SERVICE CENTER Date: APR 12 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

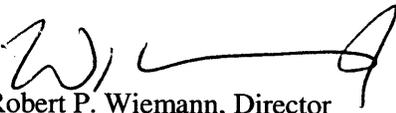
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
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 claims to be engaged in the business of manufacturing motor parts. It seeks to employ the beneficiary temporarily in the United States as its sales team manager. The director determined that the petitioner had not established that the beneficiary had been employed abroad or would be employed in the United States in a primarily managerial or executive capacity. The director also determined that the petitioner failed to establish that it has a qualifying relationship with the claimed foreign entity.

On appeal, counsel asserts that the beneficiary has been and would continue to act in a managerial capacity and is eligible for L-1 classification.

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 regulations at 8 C.F.R. § 214.2(l)(3)(v) state 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 (l)(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 U.S. petitioner was established in 2001 and claims to be a subsidiary of Selflex Co., Ltd., located in Korea. The petitioner seeks to employ the beneficiary in the United States for three years at an annual salary of \$36,000.

Section 101(a)(44)(A) of the Immigration and Nationality Act ("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 first issue in this proceeding is whether the petitioner has established that the beneficiary was employed abroad and will be employed in the United States in a primarily managerial or executive capacity. In support of the petition, the petitioner provided a brief description of the beneficiary's job duties with the foreign

entity. As the director included the description in the denial, the AAO need not repeat the list of duties in the instant decision.

As noted by the director, CIS issued a request for additional evidence on April 29, 2002. The director reviewed the contents of the request and included the petitioner's response in the denial. As such information has therefore been made part of the record the AAO need not repeat it in the present proceeding.

On September 25, 2002, the director denied the petition noting that the list of the beneficiary's tasks abroad and the list of projected tasks with the petitioning organization were too general to convey an understanding of what the beneficiary has been and would be doing on a daily basis. The director also noted that the petitioner's most recent organizational chart for the foreign entity did not indicate the beneficiary's position within the organizational hierarchy and did not show whether the beneficiary has any subordinates.

On appeal, counsel states that the beneficiary's duties abroad were typical of a sales manager and included "overseeing sales persons, hiring and training sales persons, making sure sales quotas are met, and relaying the company's sales objectives to the sales team." Although this brief description suggests that the beneficiary was primarily occupied with overseeing the work of a sales team, counsel fails to address the director's concern regarding the foreign company's organizational chart, which does not identify any of the beneficiary's claimed subordinate employees. Furthermore, if personnel management was the beneficiary's key role, the petitioner should have provided evidence to establish that such personnel is comprised of professional, managerial, or supervisory individuals. *See* 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In the instant case, the petitioner did not provide any information about the job duties of the beneficiary's "team" of sales persons and therefore failed to establish that they are professional, managerial, or supervisory individuals.

The petitioner also stated previously that aside from managing sales people, the beneficiary's overseas job duties included doing market research, designing models, and dealing with customers and manufacturers. It is noted that an employee who primarily performs the tasks necessary to produce a product or to provide services 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). While the director was correct in pointing out that these descriptions are general, they nevertheless suggest that the beneficiary was performing the company's operational tasks rather than focusing primarily on managerial or executive duties. With respect to the beneficiary's proposed duties in the United States, counsel provided yet another brief list of broad business objectives despite the director's prior statements clearly informing the petitioner that specifying the beneficiary's daily tasks is essential to determining whether the beneficiary's duties are primarily managerial or executive.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Simply giving the beneficiary a managerial or executive position title is not enough to determine whether the beneficiary is functioning in a managerial or executive capacity. In the instant case, the beneficiary's description of job duties lacks sufficient detail, therefore preventing the AAO from being able to conclude that the beneficiary has been and will be primarily performing managerial or

executive job duties. The record does not establish that a majority of the beneficiary's duties have been or will be primarily directing the management of the organization or primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. Nor does the record suggest that the beneficiary will be relieved from performing non-qualifying duties. The petitioner has not demonstrated that the beneficiary primarily manages an essential function of the organization or that he operates at a senior level within an organizational hierarchy. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

The other issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between it and a foreign entity.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

*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 (l)(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.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(I) state:

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

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(J) state:

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

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(K) state:

*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.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(L) state, 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.

In the petition Form I-129, the petitioner stated that it is a subsidiary of the foreign parent entity. It further stated that both entities are 100 percent owned by a single individual, which suggests that the two entities have an affiliate rather than a parent/subsidiary relationship. The stock certificate submitted in support of the petition indicates that the chief executive officer of both entities owns all of the issued shares of the petitioning entity. In the request for additional evidence, the director stated that the petitioner failed to provide documentation to establish ownership of the foreign entity. Although the petitioner responded to other issues discussed in the request for evidence, it failed to address the issue of the foreign entity's ownership.

In the denial the director noted the petitioner's failure to submit this crucial evidence and concluded that the petitioner failed to establish the existence of a qualifying relationship with a foreign entity. Failure to submit requested evidence, which precludes a material line of inquiry, as the petitioner did in the instant case, shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Furthermore, where a petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, the AAO may disregard that evidence when submitted on appeal. Rather, the AAO may adjudicate the appeal based on the record of proceedings before the director. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). If the petitioner desires further consideration of such evidence, the petitioner may file a new petition. As the petitioner in the instant case failed to submit evidence requested in the director's notice, the evidence submitted on appeal addressing the issue of a qualifying relationship will not be considered. For this additional reason the petition cannot 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.