

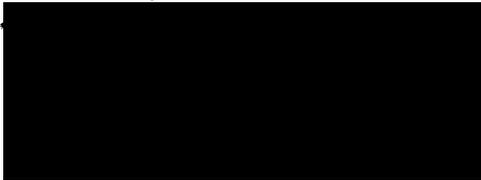
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U.S. Citizenship
and Immigration
Services

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FILE: SRC 02 246 51859 Office: TEXAS SERVICE CENTER Date:

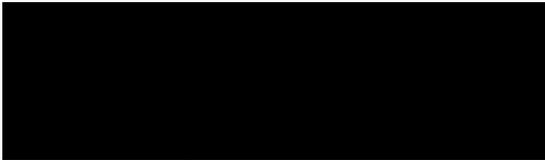
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IN RE: Petitioner:
Beneficiary:



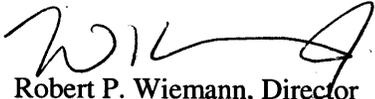
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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, Texas 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 an importer and exporter. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary has been and would be employed in a primarily managerial or executive capacity in the United States.

On appeal, counsel disputes the director's findings and submits additional evidence in support of the appeal.

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 U.S. petitioner states that it was established in 1998 and that it is a subsidiary of Rudolf Trading Co., Ltd., located in Korea. The initial petition was approved and was valid from September 22, 1999 to September 21, 2002. The petitioner seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of \$36,000.

At issue in this proceeding is whether the petitioner established that the beneficiary has been and will be employed primarily in a managerial or executive capacity.

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.

In Part 5 of the petition the petitioner stated that the beneficiary will "continue to direct the establishment and growth of a new business." The petitioner did not submit any additional information addressing the beneficiary's job duties in the United States.

On October 18, 2002, the director denied the petition concluding that the petitioner does not have a sufficient support staff to relieve the beneficiary from having to perform non-qualifying duties.

On appeal, counsel asserts that the petitioner uses contractors and subcontractors to run the day-to-day operations. Counsel also refers to various documents submitted with the original petition and claims that these documents show the petitioner's "extensive use of contractors and subcontractors." However, the shipping documents and sales invoices that counsel submitted in support of the appeal only indicate that the petitioner has been engaged in the regular course of business. Contrary to counsel's implication, none of the documents submitted indicate who actually performs such tasks as answering phones, and marketing and selling the petitioner's merchandise, all of which are germane to carrying on with the regular course of the petitioner's business. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel states that the number of employees does not determine eligibility as an L-1A manager or executive and that, therefore, the size and nature of the petitioning entity are irrelevant. However, contrary to counsel's assertions, the director's consideration of the size of the petitioning organization comports with current law. While size cannot be the sole consideration in determining eligibility for managerial or executive status, the director can and should consider the size of the petitioner's personnel for the purpose of establishing whether the petitioner has a sufficient staff to relieve the beneficiary from performing non-qualifying duties. In the instant case, the petitioner provided a very brief description of the beneficiary's job duties in Part 5 of the petition. As such, the petitioner has not clarified what duties the beneficiary performs on a daily basis. This considerable ambiguity, coupled with the petitioner's lack of a sufficient support staff, suggest that the

beneficiary is directly involved in the non-qualifying operational tasks required to run a business on a daily basis.

As concluded by the director, 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. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel or that he will be relieved from performing non-qualifying duties. The petitioner has not demonstrated that it has reached or will reach a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis. Nor does the record demonstrate 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.

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.