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U.S. Citizenship
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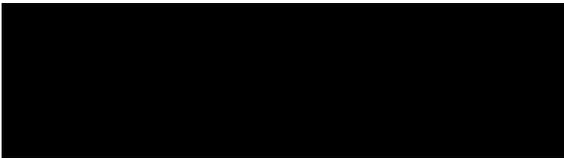


FILE: WAC 01 217 53469 Office: CALIFORNIA SERVICE CENTER Date:

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)

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, California 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 a multimedia telecommunications broadcasting company. It seeks to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. entity and the beneficiary's foreign employer. The director also concluded that the petitioner failed to establish that the beneficiary's duties abroad were primarily of a managerial or executive nature.

On appeal, the petitioner disputes the director's findings and expresses the desire to make the U.S. entity fully operational.

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 regulation at 8 C.F.R. § 214.2(l)(3)(v) states 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 first issue in this proceeding is whether a qualifying relationship exists between the U.S. petitioner and a foreign entity.

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

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.

The record reflects that on September 21, 2001 CIS issued a request for additional evidence of a qualifying relationship, including stock certificates, a stock ledger, a detailed list of owners, and documentation, such as wire transfers and bank statements, showing that the foreign parent company paid for its stock ownership.

Although the response included a stock certificate indicating that the parent company was issued 5,000 shares of the petitioner's stock, the petitioner failed to submit any documentation that shows that the foreign entity paid for its shares in the petitioning organization.

The director denied the petition concluding that the petitioner failed to establish the existence of a qualifying relationship.

On appeal, the petitioner refers to Korean government mandates that require that an L-1 visa classification be granted before the petitioning entity can get beyond the start-up stage of development. However, the petitioner does not fully explain these Korean mandates, nor does it provide documentary evidence of such mandates. It is noted that simply going on record without providing 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).

On review, the petitioner failed to provide sufficient evidence to demonstrate that a qualifying relationship exists between the U.S. petitioner and the beneficiary's foreign employer. Therefore, the beneficiary is ineligible for L-1 visa classification as an intracompany transferee under section 101(a)(15)(L) of the Immigration and Nationality Act.

The other issue in this proceeding is whether the petitioner has established that the beneficiary's employment abroad was in a primarily 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.

A thorough review of the record indicates that the director improperly noted that the petitioner failed to submit a description of the beneficiary's duties abroad as previously requested. Contrary to the director's belief, CIS's request for additional evidence did not include any mention of the beneficiary's duties either abroad or his prospective duties in the United States. Therefore, the director's comment regarding the petitioner's failure to provide a description of the beneficiary's duties is hereby withdrawn.

Nevertheless, the director properly concluded that the petitioner failed to submit sufficient evidence to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity. The record indicates that the director reviewed the descriptions of the beneficiary's duties abroad as provided by the petitioner and based her denial primarily on that information.

Although given the opportunity to overcome the director's objections by providing additional information on appeal regarding the beneficiary's duties, the petitioner has chosen not to do so. Therefore, a decision will be made based on information provided thus far. The record as it currently stands indicates that the beneficiary's duties abroad have been "[to] plan, strategize, implement business decisions to develop t-business (television business through home shopping) for Korean companies selling their manufactured products over tv [sic]." This brief description of duties indicates that the beneficiary has a great deal of discretion over the direction of the overseas company. However, the petitioner has failed to define what it means to "plan, strategize, and implement" in the context of the foreign entity's business. Based on this broad description of duties the AAO is unable to determine what the beneficiary would actually be doing on a daily basis.

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. The petitioner has not demonstrated that the beneficiary primarily supervised a subordinate staff of professional, managerial, or supervisory personnel, or that he was relieved of having to perform non-qualifying duties. Based on the evidence submitted, it cannot be found that the beneficiary was employed abroad primarily in a qualifying managerial or executive capacity.

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.