



U.S. Citizenship
and Immigration
Services

FILE: EAC 02 144 53630 Office: VERMONT SERVICE CENTER Date: **APR 28 2004**

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:

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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, Vermont 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 operating in the United States as an import-export business. It presently employs the beneficiary as vice-president, and seeks to extend the temporary employment of the beneficiary. The petitioner filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee. The director denied the petition concluding that the beneficiary would not be employed in the U.S. in a primarily managerial or executive capacity.

On appeal, counsel submits: (1) the petitioner's year 2001 U.S. Corporation Income Tax Return; (2) Internal Revenue Service (IRS) Forms W-2; and (3) a list of petitioner's employees, including their job titles and duties. Counsel requests the AAO to approve the petition based upon the attached documentation.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) further states that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The issue in the present case is whether the beneficiary has been or will be employed in the United States in a primarily managerial or executive capacity, as defined at §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. §§ 1101(a)(44)(A) and (B).

The petitioner did not submit sufficient evidence with the petition establishing the beneficiary's employment in the United States as a manager or executive. As required by 8 C.F.R. § 103.2(b)(8), the director requested the following additional evidence on April 28, 2002: (1) a comprehensive description of the beneficiary's job

duties; (2) a list of the petitioner's employees, identifying each employee by name and position title, and a description of their job duties; (3) an organizational chart of the U.S. company describing the managerial hierarchy and current staffing levels; (4) payroll records for the months of February and March 2002; (5) the petitioner's 2001 U.S. Corporation Income Tax Return; and, (6) Internal Revenue Service (IRS) Form W-2 for each employee during the year 2001.

In response, the petitioner submitted a list of employee positions in the U.S. company, Forms W-2 for eight employees, and job descriptions for the corporation's president and vice-president. The director subsequently denied the petition noting that, although specifically requested, the petitioner did not "personally identify" the employees of the U.S. organization. Nor did the petitioner submit a copy of its requested 2001 corporate income tax return. The director also stated that, after reviewing the Forms W-2, it appeared that only two individuals were employed full-time in the U.S. entity. The director therefore determined that the beneficiary was likely performing the sales of the organization, and would not be engaged primarily in a managerial or executive capacity.

On appeal, counsel submits the following documentation, which was previously requested by the director: (1) the petitioner's year 2001 U.S. Corporation Income Tax Return; (2) revised IRS Forms W-2; and, (3) a list of the petitioner's employees, including their job titles and duties. Counsel requests that the AAO approve the petition based upon the additional evidence.

On review, the AAO agrees with the decision of the director. The record does not establish that the beneficiary will be employed in a primarily managerial or executive capacity. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Should the petitioner wish the service to consider the submitted evidence, the petitioner may file a new visa petition on the beneficiary's behalf that is supported by competent evidence that the beneficiary is entitled to the status sought under the immigration laws.

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.