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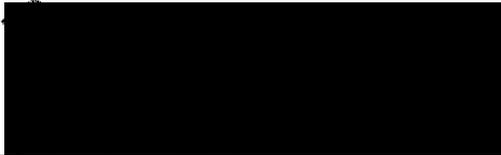
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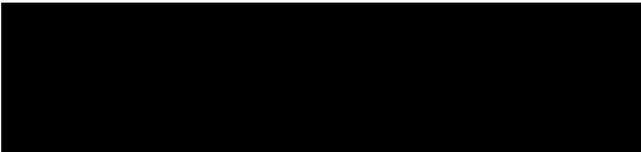
File: WAC 04 075 52806 Office: CALIFORNIA SERVICE CENTER Date: AUG 26 2005

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)

IN 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 appeal will be remanded to the director to request additional evidence and entry of a new decision.

The petitioner seeks to change the beneficiary's status from manager or executive (L-1A) to specialized knowledge worker (L-1B) and extend his period of stay as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L). The United States petitioner, a corporation organized in the State of California, is engaged in research, development, and sale of computer storage systems and claims to be the subsidiary of Aralion, Inc., located in Seoul, Korea. The beneficiary was initially granted a one-year period of stay as an L-1A nonimmigrant manager or executive to open a new office in the United States.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the director erroneously based his decision on an incorrect standard. Specifically, the petitioner alleges that it filed a petition to change the beneficiary's status from manager or executive (L-1A) to specialized knowledge worker (L-1B) and extend his period of stay as a nonimmigrant intracompany transferee, but the director treated the petition as a request for an extension of the beneficiary's stay as a manager or executive. The petitioner concludes that the director's determination that the U.S. entity did not support a managerial or executive position was inapplicable to the evidence presented regarding the beneficiary's qualifications as an intracompany transferee with specialized knowledge and therefore requests reconsideration of the petition in relation to the applicable regulation. In support of this assertion, counsel submits a brief statement on the Form I-290B and additional evidence.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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)(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.

- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

In addition, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides that a visa petition under section 101(a)(15)(L) 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 managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The L Supplement to Form I-129 clearly indicates that the petitioner is seeking to employ the beneficiary as an intracompany transferee with specialized knowledge.¹ As set forth above, the proper standard for determining whether the petitioner is qualified for the benefit sought is whether the beneficiary possesses specialized knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures. The director, however, reviewed the petition as a request to extend the beneficiary's status as an L-1A manager or executive and relied on the definitions of managerial and executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

¹ Although the petitioner indicated on the L Supplement to Form I-129 that it sought to employ the beneficiary as an intracompany transferee with specialized knowledge, the petitioner failed to indicate that a change of status from L-1A to L-1B was being requested. In fact, in Part 2 of Form I-129, the petitioner indicated that (1) "L-1" classification was requested, without specifying which specific L status was being petitioned for; (2) it sought a continuation of the beneficiary's "previously approved employment without change;" and (3) it was requesting an extension and not a change of the beneficiary's current status. Despite the petitioner's apparent errors in its completion of Form I-129, however, it did clearly indicate on the L Supplement to Form I-129 and later in its response to the request for evidence that a change to L-1B classification was being requested.

- (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 denied the petition, finding that the evidence in the record did not support a finding that the beneficiary would be employed in a primarily managerial or executive capacity. The director noted that the beneficiary would be performing many of the duties necessary to providing the service of the business, and further found that the beneficiary would not be supervising a staff of subordinate managers, professionals, or supervisors who would relieve him from performing non-qualifying duties.

In this case, the director clearly treated the petition as a request for an extension of a new office based on the beneficiary's continued status as an L-1A manager or executive. However, the record indicates that the petitioner filed an extension request while simultaneously requesting to change the beneficiary's status from an L-1A manager or executive to an L-1B intracompany transferee with specialized knowledge. The director, however, failed to review the petition for compliance with the regulatory definition of specialized knowledge set forth at 8 C.F.R. § 214.2(l)(1)(ii)(D). The director requested additional evidence in support of the beneficiary's qualifications as a manager or executive on February 12, 2004. Despite the petitioner's response, which clearly stated that the issue of whether the beneficiary was functioning as a manager or executive was not relevant since the petitioner was seeking classification of the beneficiary as an intracompany transferee with specialized knowledge, the director denied the petition based on the insufficiency of the evidence to establish that the beneficiary was qualified as a manager or executive. On appeal, counsel for the petitioner reiterates once again that the petitioner is seeking to change the beneficiary's classification to an intracompany transferee with specialized knowledge, and requests consideration of the evidence submitted which counsel asserts establishes that the beneficiary possesses specialized knowledge of the company's products and procedures.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for consideration of the issue stated above. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.