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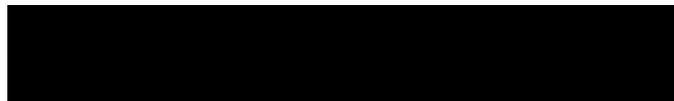


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FILE: SRC-03-242-53914 Office: TEXAS SERVICE CENTER Date:

JUN 29 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)

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 appeal will be summarily dismissed.

The petitioner states that it provides computer consulting services, including designing and installing networks and software. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its General Manager, pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). 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.

On the Form I-290B appeal, counsel for the petitioner states that:

The reason for denying the requested petition are [sic] inaccurate. Appropriate documentation was submitted supporting the managerial position of the Beneficiary [T]he basis for denial of this petition is erroneous [A]n employee with a clearly executive/managerial title as General Manager clearly should have the wide powers possessed by [the beneficiary] in the operations of [the petitioner].

The petitioner did not address the specific issues presented in the director's denial or assert that the director's decision was based on any erroneous conclusion of law or statement of fact. With the appeal the petitioner provided numerous previously submitted documents as well as new evidence, yet the petitioner failed to discuss how the documents refute the director's decision or support the petitioner's eligibility.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The beneficiary's initial job description submitted by the petitioner was brief and vague, providing little insight into the true nature of the tasks the beneficiary will perform in the United States. In response to the director's request for evidence, the petitioner provided additional explanation regarding the beneficiary's scope of responsibility, yet the petitioner failed to adequately describe what the beneficiary will do on a daily basis. General statements such as "the Beneficiary's duties [include] . . . Managing the overall activities of the company including administrative and financial aspects" do not sufficiently indicate what will be the beneficiary's actual tasks. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.* The provided job descriptions do not allow Citizenship and Immigration Services (CIS) to determine the actual tasks that the beneficiary will perform, such that they can be classified as managerial or executive in nature. The petitioner provides no additional explanation on appeal.

However, the AAO notes that one sentence in the decision, taken by itself, constitutes an erroneous statement of law. The director stated that "[t]he beneficiary is not primarily performing in a managerial or executive capacity since the beneficiary is not managing other professionals or managers." A beneficiary is not required to manage subordinate employees in order to qualify for L-1A status, contrary to the impression left by the above-referenced statement. This statement by the director will be withdrawn. However, in the following statement, the director provided that "it would indicate the beneficiary would have to engage in the day to day business activities of the company given the current structure of the company." The two statements considered together reflect that the director considered the reasonable needs of the petitioner in order to assess what tasks would be performed by the beneficiary in the absence of supporting staff members. The director's overall analysis is deemed appropriate, and the ultimate conclusion correct.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

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. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.