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U.S. Citizenship  
and Immigration  
Services



D7

File: SRC 01 230 50621 Office: TEXAS SERVICE CENTER Date: MAR 17 2005

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

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

6

**DISCUSSION:** The Director, Texas Service Center, denied the petition for a nonimmigrant visa, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen. The motion will be granted. The previous decision of the AAO will be affirmed. The petition will be denied.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its general manager as an L-1A nonimmigrant intracompany transferee 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 and the AAO denied the visa petition because the petitioner failed to establish that the beneficiary would be acting in a capacity that was primarily managerial or executive in nature. The petitioner submits a motion to reopen that is accompanied by additional documentary evidence submitted for the first time into the record of proceeding. Thus, the motion to reopen qualifies for consideration under 8 C.F.R. § 103.5(a)(2) because the petitioner is providing new facts with supporting documentation not previously submitted.

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.

With the petition, the petitioner provided a brief description of the beneficiary's duties as general manager. Finding that the initial evidence was insufficient to establish eligibility for the benefit sought, the director requested additional evidence clarifying the exact nature of the beneficiary's duties and a description of the beneficiary's subordinates, their duties, and their educational backgrounds. In response to this request, the

petitioner submitted a detailed description of the beneficiary's proposed duties accompanied by a statement outlining the anticipated impacts that such duties would have on the organization. The director determined that the petitioner's response, although detailed in its explanation of the beneficiary's duties, provided no confirmation that the U.S. entity employed anyone other than the petitioner. The director concluded the beneficiary would not be relieved from performing the day-to-day tasks essential to the daily operations of the business without other employees to share the workload. Consequently, the director determined that the beneficiary would not be acting in a capacity that was primarily managerial or executive, and denied the petition on January 31, 2002. On appeal, the AAO upheld the director's findings, noting that the evidence in the record was insufficient to establish that the beneficiary would be employed in a primarily managerial or executive capacity. With the motion to reopen, the petitioner submits affidavits from the beneficiary's subordinate employees attesting to their length of employment under the beneficiary's supervision.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(I)(3)(ii). An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

On appeal, counsel for the petitioner submitted a letter dated February 25, 2002. In this letter, the petitioner stated that the beneficiary's duties included the supervision of all aspects of the business, in addition to the negotiation of contracts with foodstuff suppliers. In addition, the petitioner stated that "[w]hen the time comes he will ultimately be responsible to hire and initially train staff members to work for the company. With the aid of specially trained staff members, it is the belief of [the petitioner] that the company will go far."

In addition to the afore-mentioned letter, the AAO also noted that the organizational chart for the U.S. entity, current as of November 2001, indicated that there were no subordinate employees working under the beneficiary, despite the fact that the U.S. entity had been operational since April of 2000. Consequently, the AAO determined that the evidence submitted on appeal was insufficient to establish that the beneficiary was qualified as a manager or executive as required by the regulations.

On motion, counsel includes newly submitted affidavits, dated July 14, 2003, from several of the beneficiary's alleged subordinate employees. The petitioner submitted these affidavits in support of the contention that the beneficiary did in fact have subordinate employees during the relevant period, and thus was functioning in a primarily managerial or executive capacity. Specifically, the affidavits indicate that the following employees worked during the following periods:

Employee	Beginning Date	Ending Date
	September 2001	February 2002
	October 2001	Present
	October 2001	December 2001
	September 2001	Present
	August 2001	Present
	August 2001	December 2001
	October 2001	Present
	October 2001	Present

The affidavits submitted indicate that the U.S. entity began employing additional persons in August 2001. While these affidavits suggest that the U.S. entity has been expanding its operations in accordance with its proposed plans for the business, this evidence is not acceptable to establish that the beneficiary was acting in a primarily managerial or executive capacity. The beneficiary was initially granted a one-year period of stay from June 1, 2000 through June 1, 2001. The petitioner filed the present petition to extend the beneficiary's stay on July 16, 2001. The evidence submitted on the motion to reopen indicates that the first subordinate employee to be hired by the U.S. entity was not hired until August of 2001. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). At the time of the filing of the petition, the beneficiary was not acting in a capacity that was primarily managerial or executive in nature.

The AAO notes that although the petitioner filed its appeal with the AAO in February of 2002, it failed to include any claim that the U.S. entity had begun employing additional persons in August of 2001. If the claims in the affidavits are correct, the U.S. entity employed at least five persons in addition to the beneficiary at the time the appeal was filed. Although the petitioner would have remained ineligible for the requested extension since it did not employ these persons at the time of the petition's filing, the credibility of these affidavits is called into question, since it is unclear why the petitioner would not have submitted evidence of these five employees at the time of the appeal. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The motion to reopen is granted. The AAO's decision of June 19, 2003 is affirmed. The petition is denied.