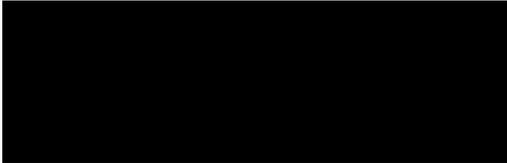




U.S. Citizenship
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Services

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prevent clearly unwarranted
invasion of personal privacy

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FILE: WAC 03 210 50214 Office: CALIFORNIA SERVICE CENTER Date: SEP 21 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)

ON BEHALF OF PETITIONER:
[Redacted]

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 summarily dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). The petitioner is engaged in import and wholesale distribution of bags. The petitioner claims that it is the subsidiary of the beneficiary's current employer, located in Busan, Korea. The petitioner seeks to employ the beneficiary as its materials department manager for a period of three years.

The director denied the petition concluding that the petitioner failed to submit sufficient evidence to establish that the beneficiary would be employed in a primarily managerial or executive capacity. Specifically, the director noted that the petitioner did not establish that it had a materials department or that it employed professional employees who would be supervised by the beneficiary in his role as materials department manager.

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, counsel for the petitioner does not dispute the director's findings or suggest that the decision was based on an erroneous conclusion of fact or law. In fact, counsel acknowledges that at the time of filing the original petition, the department to be managed by the beneficiary was in its planning stages and that the employees to be supervised by the beneficiary had not been determined, thereby essentially agreeing with the director's finding that the petitioner did not establish that it in fact had a materials department or that the beneficiary would supervise a staff of professionals. Counsel states that *presently*, the department would have four employees and as such, the beneficiary would be employed in a primarily managerial position that involves supervising and directing a subordinate staff. The petitioner submits an updated organizational chart naming four employees in the materials department and requests that the petition be approved. However, 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).

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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition.

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.

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. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.