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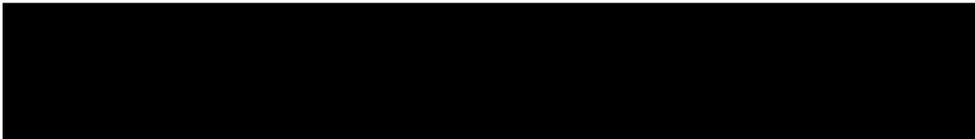
File: SRC 04 085 51663 Office: TEXAS SERVICE CENTER Date:

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, Chief
Administrative Appeals Office

DISCUSSION: The Director of the Texas Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The petitioner is a Texas limited liability company allegedly engaged in the construction business. The petitioner seeks to extend the employment of the beneficiary as its president 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 denied the petition after concluding that the petitioner failed to establish that the beneficiary will be employed in a managerial or executive capacity.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) requires an affected party to file the complete appeal within 30 days after service of the decision, or, in accordance with 8 C.F.R. § 103.5a(b), within 33 days if the decision was served by mail. The record indicates that the decision of the director was mailed and faxed on April 1, 2004. Although there was an attempt to file an appeal on May 3, 2004, the Texas Service Center properly rejected the appeal, because the Form I-290B was unsigned. The Texas Service Center promptly returned the appeal documents along with a rejection notice. The appeal was filed with an executed Form I-290B on May 12, 2004, 41 days after the decision was mailed. Thus, the appeal was not timely filed.

The regulation at 8 C.F.R. § 103.2(a)(1) requires that all documents submitted to a service center be executed and filed in accordance with the instructions on the form. Further, 8 C.F.R. § 103.2(a)(7)(i) provides that “[a]n application or petition which is not properly signed . . . shall be rejected as improperly filed” and that “[r]ejected applications and petitions . . . will not retain a filing date.” Therefore, the attempt to file an appeal with an unsigned I-290B on May 3, 2004 did not extend the time to file a properly executed appeal beyond the 33rd day.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

Furthermore, upon review, the AAO would agree with the director's decision and would dismiss the instant appeal on the merits, if it were not being rejected as untimely filed. As correctly noted by the director, the petitioner has failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity as defined in section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44). 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(l)(3)(ii). In this matter, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. 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). Going on record without supporting documentary evidence is not sufficient for purposes

of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity. To the contrary, the record establishes that the beneficiary will be employed primarily as a first-line supervisor of non-professional employees. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. Section 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

It also appears that the beneficiary will perform the tasks necessary to produce a product or to provide a service, e.g., sales tasks. An employee who “primarily” performs the tasks necessary to produce a product or to provide services is not considered to be “primarily” employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. As the record does not establish that the petitioner will employ a subordinate staff capable of relieving the beneficiary of the need to perform non-qualifying tasks, it has not been established that he will primarily perform qualifying duties.

ORDER: The appeal is rejected.