



U.S. Citizenship  
and Immigration  
Services

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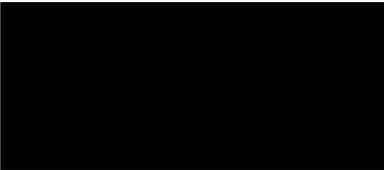
FILE: [Redacted] Office: VERMONT SERVICE CENTER

Date: JUL 08 2006

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

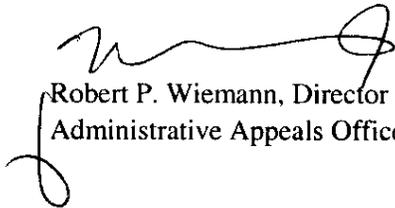
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the appeal will be sustained.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of New York that is operating as a food import and distribution company. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer, located in Pusan, Korea. The petitioner now seeks to employ the beneficiary as its general manager for three years.

The director denied the petition concluding that the petitioner had not established that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity.

On appeal, counsel claims that Citizenship and Immigration Services' (CIS) denial of the nonimmigrant petition is "clearly contrary to the facts of this case and to the ample and extensive evidence that has been submitted in support of this petition." Counsel explains that as general manager, the beneficiary would oversee fifty-three subordinate employees, including three department managers, and would not be performing the day-to-day operations of the U.S. business as determined by the director.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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.

The issue in the instant proceeding is whether the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (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.

On the nonimmigrant petition filed on May 16, 2002, the petitioner stated that as general manager, the beneficiary would oversee the petitioner's daily business operations, including the planning, developing and implementation of short and long-term goals, financial and budgetary planning, market research, and the hiring, firing and promotion of personnel. The petitioner noted on the petition that it employs fifty employees. In an accompanying letter dated April 30, 2002, the petitioner provided the following description of the beneficiary's responsibilities in the proposed position:

As general manager of [the petitioning entity, the beneficiary] will have responsibility for overseeing, through the administration of subordinates, all aspects of this company's operations. This will include establishing hiring and firing and employee promotional policies, major financial and budgetary decisions, major decisions concerning advertising, marketing, sales and other promotional activities of the corporation to expand upon its market share, increase its level and volume of business and increase its corporate income and profitability. These activities will be accomplished through the setting and establishment of short term and long-term corporate goals, policies and objectives that [the beneficiary] will develop.

The petitioner submitted an organizational chart for the U.S. entity identifying the beneficiary's position as subordinate only to the petitioner's president and vice-president. The beneficiary's immediate subordinates were identified on the organizational chart as the managers of the administration department, import department and distribution department. Each department was also shown to have one or two assistant managers and support staff, such as administrative assistants, bookkeepers, and secretaries. The petitioner also provided Form 941, Employer's Quarterly Federal Tax Return, for the quarters ending September 1999 and December 2000, Form W-2, Wage and Tax Statement, for the year 2000, and its year 2000 Form 1120, U.S. Corporation Income Tax Return.

On June 20, 2002, the director issued a notice of action requesting that the petitioner submit the following additional evidence: (1) an organizational chart for the U.S. entity identifying the beneficiary's managerial position; (2) a comprehensive description of the beneficiary's proposed job duties explaining how the beneficiary's job duties would be managerial or executive in nature, and demonstrating that the beneficiary would be employed at a senior level with a subordinate staff of professional, managerial, or supervisory personnel who would relieve him from performing non-qualifying job duties; (3) a description of the positions held by the beneficiary's subordinates; (4) documentation of the subordinates' educational credentials; and (5) a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis.

In a response dated June 28, 2002, the petitioner stated that as general manager of a company with fifty-six employees, the beneficiary would be required to apply leadership skills to guide the personnel, evaluate employee strengths in order to assign personnel to the appropriate department, act upon subordinate managers' recommendations for hiring, firing and promotions, analyze the costs for department operations, including labor, facilities, inventory and supply costs, engage in cost analysis, evaluate the products and pricing of the petitioner's competitors, and guide the U.S. company so as to ensure its competitiveness and profitability. The petitioner explained the beneficiary would fulfill these expectations by performing the following job duties:

The General Manager of [the petitioning organization] will have responsibility, working with the three company department managers and this company's senior management, for the development and implementation of company budgets and financial objectives, cost controls and related plans and programs for an expansion and increase in the level of operating profitability of this company through greater and more efficient use of company resources and the elimination of waste and unnecessary expenditures. This will require continuous and constant oversight, monitoring and examination of each department's activities and financial performance, including comprehensive internal department inventory, payroll and other

audits. This will require an examination and analysis of the activities, products, income, expenditures and prices of each department of this company so that we can develop, implement and revise plans and strategy that will allow this company to operate at the most profitable level possible. Upon this analysis, the General Manager will make decisions and give instructions and orders to the three company Department Managers where changes in operating procedures are required and new procedures and policies are implemented. The General Manager will be required to render a comprehensive business and fiscal examination and analysis of the activities products, pricing and marketing of this company's competitors, from information received from our department staff, and develop and implement instructions to our department managers plans and strategies to meet that competition and enlarge our market share.

As General Manager of [the petitioning organization, the beneficiary] will have responsibility for overseeing, through the supervision of subordinate department managers, all aspects of this company's day-to-day business operations, including hiring and firing and employee promotional policies, major financial and budgetary decisions, major decisions concerning advertising, marketing, sales and other promotional activities of the corporation to expand its market share, increase its level and volume of business and increase its corporate income and profitability, through the setting and establishment of long term and short term company goals, policies and objectives. The General Manager will meet with the company President and Vice-President on a regular basis to review various problems and issues the company is facing, discuss and decide on actions to be taken on both present and new business activities, meet with company department managers and assistant managers in group and individual meetings and group conferences. The General Manager will provide instruction, guidance and supervision to subordinate managerial staff when errors are made or company operating procedures should be modified to improve overall company operating efficiency. The General Manager will review and approve documentation prepared by subordinates or requiring action or approval at the senior managerial level in accordance with company policies.

The General Manager will meet with government regulatory personnel during company inspections. The General Manager will communicate with outside personnel including our company attorneys and accountants and financial institutions as necessary in furtherance of the company's operations and objectives.

The petitioner also provided the following allocation for the time the beneficiary would spend on his specific job duties:

1. Meetings with the company President and Vice-President and acting upon those meetings, to review various problems the company is facing, discuss and decide on actions to be taken on new business activities, maintain and enhance existing business contracts and relationships, major budgetary and financial allocation decisions, such as employee hiring and firing and promotions, major purchases, such as major capital expenditures. An example of this would be a proposed renovation of our corporate premises, the dismissal of a manager or employee for misconduct or mismanagement, entering into a major advertising contract, etc., as well as miscellaneous legal, accounting, personnel and other business matter. 10-15 hours per week.

2. Meeting with this company's staff of department managers, assistant managers, administrative assistants and other employees concerning import and distribution activities, sales and marketing activities and other company administrative matters, in both group and individual meetings and group conferences, to discuss such matters as assignments, review of employee performance, communicating to departmental managerial staff and to employees [sic] decisions that have been made on all aspects of this company's operations; reviewing, improving and modifying proposed company expenditures and payments, discussing and giving instructions and direction on a variety of company matters, including business transactions with both present and future customers and clientele companies, marketing and advertising activities, company personnel matters and other various administrative matters that require implementation through direction and guidance to our company departmental staff. 15-20 hours per week.
3. Communications and meetings with outside business personnel, including our company's accountants, attorneys, senior management of major customers and clients, senior advertising and marketing personnel, banking and financial institution officials, and reviewing various company documents. 10-15 hours per week.

The petitioner further provided job descriptions for the beneficiary's three lower-level managers, and submitted diplomas and certifications of the advanced degrees held by each.

In a decision dated January 9, 2003, the director concluded that the petitioner had failed to demonstrate that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity. The director stated that the petitioner's vague description of the beneficiary's job duties "does not expound on the day-to-day activities of the beneficiary," and noted that the petitioner merely paraphrased the regulatory definitions of managerial capacity and executive capacity. The director also stated that the beneficiary's three subordinate managers do not appear to be professionals, and therefore concluded that the beneficiary would not be employed at a senior level in the U.S. organization. The director further noted that it appeared the beneficiary would likely be engaged in the non-managerial, daily operations of providing the petitioner's products or its services. Accordingly, the director denied the petition.

In an appeal filed on February 6, 2003, counsel claims that CIS' denial of the instant petition was contrary to the facts and evidence submitted in support of the nonimmigrant petition. Counsel states that the beneficiary, as general manager, would be employed in the petitioner's "third most senior position" with fifty-three lower-level employees. Counsel explains that the beneficiary would oversee three department managers, each of who are performing a professional function within the overall operations of the petitioning organization.

Counsel also challenges the director's determination that the record lacked an adequate description of the beneficiary's proposed job duties. Counsel states that the petitioner submitted a detailed statement of the beneficiary's job duties in response to the director's request for evidence, and restates some of the job duties, which counsel asserts the beneficiary would be performing in a managerial capacity. Counsel contends that the evidence, including documentation of the petitioner's \$26.5 million annual gross revenue and its large personnel structure, demonstrates that the beneficiary would be employed in a primarily managerial capacity.

On review, the record supports a finding that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity. 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). As required in the regulations, the petitioner must submit a detailed description of the executive or managerial services to be performed by the beneficiary. *Id.*

The job description submitted by the petitioner clearly outlines the job duties to be performed by the beneficiary in a managerial and executive capacity. The job description submitted by the petitioner in response to the director's request for evidence specifically addresses how the beneficiary would be employed in a qualifying capacity, including such job responsibilities as monitoring and analyzing the performance, activities, products, income and expenditures of the petitioner's administration, import, and distribution departments, instructing his subordinate managers of changes in operating procedures and policies, developing programs to increase the petitioner's competitiveness and profitability, and handling all personnel matters, such as hiring, firing, and promoting employees. Equally as important, the petitioner sufficiently documented the job responsibilities of the petitioner's three lower-level managers. This information is relevant and necessary in order to determine whether the beneficiary will, in fact, be relieved from performing the non-qualifying daily functions of the petitioning organization. The petitioner's description of the managers' job duties and documentation of lower-level employees demonstrate that the three managers and each department's support staff would perform the daily activities of the business, such as executing daily financial transactions, purchasing and importing goods, and conducting sales. The record is therefore persuasive in establishing the beneficiary's proposed employment in a primarily managerial and executive capacity. The director's decision on this issue will be withdrawn. The appeal will be sustained.

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. Here, that burden has been met. Accordingly, the director's decision will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained.