

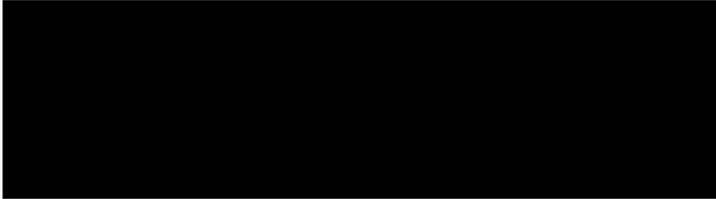


U.S. Citizenship
and Immigration
Services

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FILE: SRC 03 236 51378 Office: TEXAS SERVICE CENTER Date: JUL 07 2006

IN RE: Petitioner:
Beneficiary:



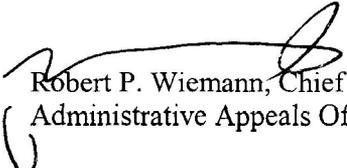
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

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, Chief
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 is an “Exports and Imports, Retail, Services” business. 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 based on the conclusion that that the beneficiary has not been employed in a managerial or executive capacity.

Although the petitioner has submitted a brief, the brief fails to adequately address the director’s conclusions. In the brief, the petitioner requests further consideration due to the fact that the U.S. company did not start operations until the end of the third quarter of 2003, and the U.S. company has been unable to find employees who qualify for the subordinate positions. On appeal, the petitioner asserts the following:

We understand that it has taken longer than expected to hire the required staff due to specific job requirements. [The beneficiary] has been in the process of interviewing potential employees, and unfortunately unable to find employees with Job Description.... He has been advised to fill the vacancies of two full-time employees by Mid March under any circumstances, and to mobilize all possible means to fulfill the requirement so he could concentrate on his actual job functions, i.e Sales, Marketing and Overall Managerial functions.

The director’s decision states that the evidence submitted shows that the U.S. company consists of one full-time employee, the beneficiary. The decision states, “It is clear that Mr. [REDACTED] is running all phases of the business from supplies to the cash register.... The U.S. company has been in business now for over one year but still does not have a subordinate staff of professional, managerial or supervisory personnel to relieve the beneficiary from performing non-qualifying duties.”

The petitioner’s general objections to the denial of the petition, without specifically identifying any errors on the part of the director or providing new evidence to support that the beneficiary is in a position of managerial capacity, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. 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).

Moreover, although the petitioner on appeal states that the beneficiary “has been advised to fill the vacancies of two full-time employees by Mid March under any circumstances,” the petitioner must establish eligibility at the time of filing. 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).

Contrary to the Petitioner’s assertions, the facts of the case do not speak for themselves, particularly in light of the director’s detailed reason for denying the petition. Rather, the record shows that the beneficiary will be engaged in running the business since it does not appear that there are any other full-time employees to perform the daily activities of the business. Thus, it appears that the beneficiary will

be providing the services of the business rather than directing such activities. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In the instant case, petitioner fails to resolve the concerns discussed in the denial.

To establish L-1 eligibility under section 101(a)(15)(L) of the Act, 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.

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.