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U.S. Citizenship
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File: EAC 07 126 50005 Office: VERMONT SERVICE CENTER

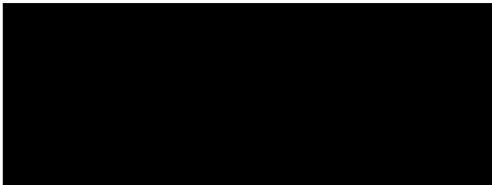
Date: OCT 29 2007

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 The decision of the director will be withdrawn, and the appeal will be sustained.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as its farm manager to open a new office 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 petitioner is a corporation organized under the laws of the State of Iowa and alleges to be an "outdoor organic pig production operation."

The director denied the petition concluding that the petitioner failed to establish (1) that the beneficiary was employed abroad in a primarily managerial or executive position; or (2) that the beneficiary will be employed in the United States in a primarily managerial or executive position within one year of petition approval.

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 asserts that the beneficiary was primarily employed abroad, and will be employed in the United States, in either an executive capacity or as the manager of an essential function of the organization. In support of this assertion, the petitioner submits a brief and additional evidence.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. See 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

Upon review, the AAO will withdraw the decision of the director and sustain the appeal. The petitioner has submitted evidence sufficient to establish that the beneficiary primarily managed an essential function abroad. The petitioner has also submitted evidence sufficient to establish that the intended United States operation will more likely than not support an executive or managerial position within one year of petition approval. 8 C.F.R. § 214.2(l)(3)(v)(C).

Accordingly, the director's decision will be withdrawn and the appeal will be sustained.¹

ORDER: The appeal is sustained.

¹It is noted that the petitioner states in the Form I-129 that it desires to employ the beneficiary from April 1, 2007 until September 1, 2008. However, as the instant petition concerns the opening of a "new office," the petition may be approved for a period not to exceed one year. 8 C.F.R. § 214.2(l)(7)(i)(A)(3). Therefore, the instant petition shall be approved for one year commencing on the date the approval notice is issued.