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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

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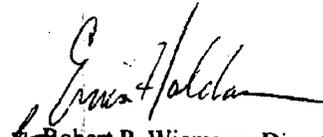
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, [REDACTED], endeavors to classify the beneficiary as an executive 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 subsidiary of [REDACTED] located in Korea and is engaged in the import and export of special film and packaging labels. It seeks to extend the petition's validity and the beneficiary's stay for two years as the U.S. entity's president.¹ The petitioner was incorporated in the State of Florida on July 2, 2001 and claims to have two employees.

On July 5, 2002, the director denied the petition because the petitioner had not established that the beneficiary will serve in a primarily executive capacity.

On appeal, the petitioner's counsel states that the beneficiary is employed in an executive capacity and directs the management of the organization or a major component or function of the organization. Counsel submits a brief and additional evidence in support of the appeal.

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 meet certain criteria. 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. Furthermore, 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.

In relevant part, the regulations at 8 C.F.R. § 214.2(l)(14)(3) state 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.

¹ The AAO notes that on Form I-129, in part two, number four, the petitioner erroneously checked the box to change the status and extend the beneficiary's stay since the beneficiary is in another status. However, this option is only available where the beneficiary's basis for classification is for new employment.

Pursuant to 8 C.F.R. § 214.2(l)(14)(ii), if the petitioner is filing a petition to extend the beneficiary's stay for L-1 classification, the regulation requires:

A visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The first issue in this proceeding is whether the beneficiary will be primarily performing executive duties for the United States entity. The petitioner makes no claim that the beneficiary will be performing managerial duties.

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 June 27, 2002, the petitioner filed Form I-129. On Form I-129, the petitioner indicated that there were two employees and described the beneficiary's duties as developing marketing channels, building the customer base, setting the goals and strategies of the company, and hiring employees.

In addition, in a June 6, 2002 letter, the vice-president of the petitioning entity stated:

[The beneficiary] will keep playing a key role at Petitioner company and carry out the same managerial and executive function as the chief executive officer of Petitioner. As President of Petitioner Company, [the beneficiary] will be responsible for setting business goals and strategies, as well as policies, of the newly established company. . . . responsible for hiring employees . . . will exercise wide latitude in discretionary decision-making and be authorized to commit the corporation to contractual obligations.

Also, a July 16, 2001 employment agreement describes the beneficiary's U.S. duties as:

- Setting the goals and policies of the company.
- Hiring and Firing employees of the company.
- Establishing domestic and international marketing channel and building customer pool.
- Gathering up to date technology and procuring up to date manufacturing equipment for the parent company in Korea.

On March 16, 2002, the director denied the petition concluding the beneficiary will not be employed in a primarily executive capacity. The director found that the beneficiary did not primarily perform executive duties a preponderance of the time because the business has not expanded to the point where the services of a full-time president would be required.

On appeal, counsel claims that the documentation demonstrates that the beneficiary's duties are primarily executive and claims the director failed to consider the reasonable needs of the petitioner's business, which does not require a large staff. Counsel states:

Marketing was the only "major component" in said start-up period. Beneficiary has "primarily directed" this major component or function of the organization since the approval of the initial L-1A petition. Based upon the fact that the petitioner has hired employees as stated in the business plan and directed an entire function of the company, the petitioner has demonstrated the beneficiary "primarily directs the management of the organization or a major component or function of the organization."

In 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). On review, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to establish what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include setting the business goals, strategies, and policies of the company. The petitioner did not, however, define the beneficiary's goals, strategies or policies. In addition,