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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 08 018 50167 Office: CALIFORNIA SERVICE CENTER

07 2008

IN RE: Petitioner:
Beneficiary:



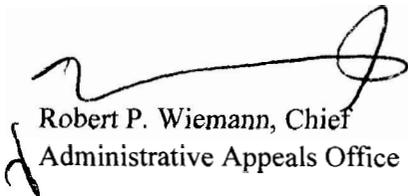
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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, California 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 filed this nonimmigrant petition seeking to classify the beneficiary 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, a California corporation, states that it is engaged in international trade including export of PVC and scrap metal materials and import of kitchen cabinets. It claims to be a subsidiary of GZ Yueao Furniture Enterprise, Co., Ltd., located in Guangzhou, China. The petitioner seeks to employ the beneficiary in the position of chief executive officer for a period of two years.

The director denied the petition on December 13, 2007, concluding that the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. The director observed that the petitioner had failed to provide a comprehensive description of the beneficiary's proposed duties as chief executive officer, and had failed to establish that the petitioner's current staff of three employees would be sufficient to relieve the beneficiary from involvement in the day-to-day operational activities of the company.

The petitioner subsequently filed an appeal on January 14, 2008. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. Counsel indicated on the Form I-290B, Notice of Appeal or Motion, that he would submit a brief and additional documents to the AAO within 30 days. Counsel did not identify a basis for the appeal on Form I-290B.

As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile on April 14, 2008 to request that counsel acknowledge whether the brief and/or evidence were timely submitted, and to afford counsel an opportunity to re-submit the documents. Counsel responded to the AAO's request on April 18, 2008 and has advised that he did not file a brief or evidence in support of the appeal as he indicated on Form I-290B.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary 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.

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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition.

The director correctly determined that the petitioner had failed to provide a comprehensive description of the beneficiary's proposed duties as required by 8 C.F.R. § 214.2(l)(3)(ii). The AAO further notes that the petitioner currently employs a vice president whose job description is essentially identical to that provided for the beneficiary's proposed position of chief executive officer. The petitioner provided no explanation as to why it required another employee to perform the same job duties. Furthermore, the petitioner indicated that both individuals would be managing department managers in the areas of waste material purchasing, accounting/shipping, sales/marketing, production and warehouse. As noted by the director, the petitioner employs a total of three employees: a vice president, a secretary who performs clerical functions, and a president/purchasing department manager. The petitioner does not currently employ the various "department managers" referenced in the beneficiary's job description, and does not claim to have any employees responsible for accounting, shipping, sales, marketing, or warehouse functions. Although the petitioner referenced its plans for an expansion, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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).

The petitioner has not submitted any evidence on appeal to overcome the director's grounds for denial of the petition. 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 the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.