



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC 00 125 50187 Office: Vermont Service Center Date:

JAN 18 2001

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data marked to prevent clearly unauthorized invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, a product development, marketing and sourcing company for high quality apparel, seeks authorization to employ the beneficiary temporarily in the United States as its general manager. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel argues that the decision was "arbitrary and erroneous and contradictory to the weight of the evidence."

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 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.

8 C.F.R. 214.2(1)(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 (1)(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 U.S. petitioner states that it was established in 1994 and that it is a wholly-owned subsidiary of [REDACTED], located in Karachi, Pakistan. The petitioner declares five employees and a projected annual income of over \$1 million.

At issue in this proceeding is whether the beneficiary will be employed in a primarily managerial or executive capacity.

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

"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. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or 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:

"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.

The petitioner describes the beneficiary's duties with the foreign entity as follows:

[The beneficiary] has been the Chief Executive Officer of [REDACTED] since 1993. As Chief Executive Officer, [the beneficiary] is in-charge of the overall business development of the Company. He is responsible for implementing corporate policies, hiring and firing staff and complete control of all commercial aspects of the corporation. He oversees the preparation of reports of shipments and billings; monitors order status; establishes letters of credit; negotiates shipments with contractors abroad; conducts quality control, product sourcing and marketing; is in-charge of liaison with shipping lines/airlines to ensure timely deliveries; is in-charge of tariffs and customs regulations, forwarding documentation to custom brokers; is responsible for eliminating operating problems and dealing with governmental procedures.

[The beneficiary's] duties with [REDACTED] involves coordinating the shipping and accounts departments to open Letters of Credits on the orders placed with sub-contracting manufacturers; ensuring that raw materials for each order were proper and synchronized with the letter of credit; overseeing of shipping fabrics and raw materials, maintaining correct and timely execution of orders and managing timely negotiations and processing of bank documents.

The petitioner describes the beneficiary's duties with the United States entity as follows:

[The beneficiary] is coming to work as General Manager with the following duties and responsibilities:

- * Implementing company policies and objectives
- * Hiring and training personnel, negotiating contracts, and insuring the consistency of accounting procedures with company policies and directed expansion
- * Supervising import, marketing and sourcing operations and being responsible for outlining and implementing quality control procedures
- * Initiating activities in order to develop business with new clients
- * Managing and developing the company to increase overall profitability
- * Liaison with parent company office in Karachi, Pakistan as well as overseas office in U.A.E. and ensuring timely deliveries and maintenance of world class standard in product quality.

On appeal, counsel reiterates his contention that the beneficiary is performing in a managerial capacity and states that:

Finally, it should be noted that the Beneficiary, as General Manager of [REDACTED], is not engaged in the performance of the actual tasks to produce the product or provide the services of the company. Rather, he is engaged in the planning, organization, directing and controlling of the company's major functions through the V.P. Sales, V.P. Administration, Accountant, Designer/CAD Operator, and the Receptionist, to achieve the organization's goals.

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as implementing the company's policies and objectives; hiring and training personnel; supervising import, marketing and sourcing operations; liaisons with the parent company; ensuring timely deliveries; and developing business with new clients, are without any context in which to reach a determination as to whether they would be qualifying. The use of the position title of "general manager" is not sufficient.

The record contains insufficient evidence to demonstrate that the beneficiary will be employed in a primarily managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary will be managing the organization, or managing a department, subdivision, function, or component of the company. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title.

Further, the petitioner's evidence is not sufficient in establishing that the beneficiary will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing nonqualifying duties.

Based on the evidence furnished, it cannot be found that the beneficiary will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

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 not been met.

ORDER: The appeal is dismissed.