



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536

Public Copy

JAN 18 2001

File: EAC 00 007 50315 Office: Vermont Service Center Date:

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

Identifying information is
prevented clearly unreasonably
invasion of personal privacy

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.

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, an import/export company, seeks authorization to employ the beneficiary temporarily in the United States as president and treasurer of its new office. The director determined that the petitioner had not established that the foreign entity is doing business, that the foreign entity has the ability to invest in the U.S. business, or that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, the petitioner submits a brief 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 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, a 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.

8 C.F.R. 214.2 (1) (3) (v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

A) Sufficient physical premises to house the new office have been secured;

B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The U.S. petitioner states that it was established in 1999 and that it is the parent company of the foreign entity, Habchi Corporation Pty Ltd., located in Lebanon. The petitioner seeks authorization to employ the beneficiary for an unspecified length of time and does not list a salary.

The first issue in this proceeding is whether the petitioner has submitted sufficient evidence to establish that the foreign entity is doing business.

8 C.F.R. 214.2(1) (1) (ii) (G) states:

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1) (1) (ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

8 C.F.R. 214.2(l)(1)(ii)(H) states:

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In a letter dated November 8, 1999, the petitioner was requested to respond to the following:

In order to establish your claimed qualifying relationship with the foreign organization please submit documentary evidence of the ownership and control of each parent, subsidiary, and affiliate organization of the foreign organization. The evidence to submit may include, but is not limited to copies of stock certificates, stock ledgers, articles of incorporation, joint-venture agreements, etc.

Submit additional evidence that the foreign organization has been engaged in the regular, systematic and continuous provision of goods or services.

In response, the petitioner submitted a certificate of registration for [REDACTED] Corporation Pty. Ltd., a share certificate which indicated that [REDACTED] owns 1 share of [REDACTED] Corporation Pty. Ltd., a letter confirming the registration of [REDACTED] Corporation Pty. Ltd., a Certificate of the Registration of a Business Name for [REDACTED] Brothers, and a copy of the petitioner's U.S. Corporation Income Tax Return for 1999 which indicated no gross receipts or sales.

The petitioner did not submit any documentation to show that the foreign entity is doing business. On appeal the petitioner fails to address the issue, stating that he traveled to Australia to study sources of supplies for opals and pearls in order to start another company.

The evidence presented is not persuasive in demonstrating that the petitioning entity is engaged in the regular, systematic, and

continuous provision of goods and/or services. Consequently, the petition may not be approved.

The other issue in this proceeding is whether the beneficiary has been and 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 "owner since 1998." The petitioner further describes the beneficiary's proposed duties in the U.S. as "overlook the business."

In a letter dated November 8, 1999, the Service requested that the petitioner respond to the following:

Please describe the typical managerial responsibilities that were performed by the beneficiary abroad, such as the method of evaluating the employees under the beneficiary's supervision. Please articulate and submit documentary evidence of the managerial decisions made by the beneficiary on behalf of the foreign organization.

In addition, please provide a short answer to each of the following questions:

1. How many subordinate supervisors were under the beneficiary's management?
2. What were the job titles and job duties of the employees managed?
3. What executive and technical skills were required to perform the overseas duties?
4. How much of the time spent by the beneficiary was allotted to executive duties and how much to other non-executive functions?
5. What degree of discretionary authority in day-to-day operations did the beneficiary have in the overseas job?

Submit additional evidence to establish that the beneficiary has been employed abroad, by a qualifying organization in an Executive/Managerial/Specialized Knowledge capacity for one continuous year of full-time employment within the three years prior to October 6, 1999, the filing date of the petition.

Submit an organizational chart for the foreign entity, as well as complete position descriptions for all of the foreign entity's employees.

Submit a complete position description for all of your proposed employees in the United States, including one for the beneficiary's position. Submit a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis.

Submit a copy of your Business Plan for commencing your start-up company in the United States, giving specific dates (Time Table) for each proposed action, for the next two years. Please start, with the date of filing of the petition, October 6, 1999.

Submit additional evidence to establish that the beneficiary will be employed in a (n) managerial capacity in the United States firm.

The petitioner did not submit any of the above requested information, either in response to the November 1999 letter, or on appeal.

The information provided by the petitioner does not describe the beneficiary's duties. There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director.

The record contains insufficient evidence to demonstrate that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner has provided no description of the beneficiary's duties that would demonstrate that the beneficiary has been or will be managing the organization, or managing a department, subdivision, function, or component of the company. The petitioner has not shown that the beneficiary has been or 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 has been or 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 has been or will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that there is a qualifying relationship between the

U.S. and foreign entities, the size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business. As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

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.