

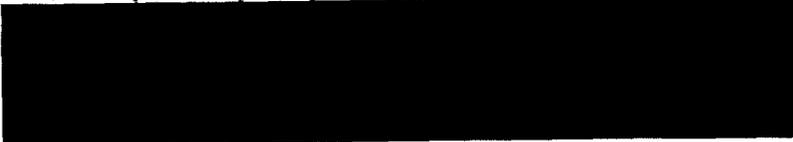


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U.S. Department of Justice  
Immigration and Naturalization Service

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



File: EAC-99-107-52201

Office: Vermont Service Center

Date: MAY 07 2002

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:



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.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

for Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is engaged in the import and export of textile machinery and garments. The petition indicates that the beneficiary was admitted as a B-2, visitor for pleasure, on February 12, 1998 until March 1, 1999. It seeks to employ the beneficiary temporarily in the United States as the president of its new office for an indefinite period. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. and foreign entities. The director also determined that the petitioner had not established that the beneficiary has been employed abroad and will be employed primarily in a managerial or executive capacity in the United States. Finally, the director determined that the petitioner had not demonstrated that the foreign entity is doing business as required by the regulations.

On appeal, counsel states that the petitioner has been able to establish that a bona fide qualifying relationship exists between the parent company and the branch located in New York. Counsel also states that the beneficiary had been and continues to be employed in a managerial/executive position.

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.

The first issue in this proceeding is whether the petitioner provided sufficient evidence to demonstrate that a qualifying relationship exists between the U.S. and foreign entities.

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

Qualifying relationship 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 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.

The regulations at 8 C.F.R. 214.2(l)(ii)(K) states:

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns directly or indirectly, less than half of the entity, but in fact controls the entity.

The United States petitioning entity was incorporated on October 15, 1998. Information contained in the record indicates that it is a wholly-owned subsidiary of Americano International Trade & Technology, located in Lahore, Pakistan. The petitioner seeks to employ the beneficiary for an indefinite period at an annual salary of \$39,000.

Counsel states that a branch relationship exists between the U.S. and foreign entities. However, the U.S. entity has been incorporated and is shown by a stock certificate to be wholly-owned by the foreign company. Therefore, it can only be classified as a subsidiary, and not a branch, which is only an operating division or office of the same organization.

The record contains a copy of stock certificate number one, which shows that the beneficiary's foreign employer, Americano International Trade & Technology owns 200 shares of the petitioner's 200 authorized shares of stock. The record contains no other evidence to show ownership and control by the foreign entity.

In a non-immigrant petition for an intracompany transferee, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. Matter of Siemens Medical Systems, Inc., 19 I&N Dec. 362 (BIA 1986). Furthermore, a stock certificate is merely written evidence that a named person is owner of a designated number of shares of stock in a corporation. Black's Law Dictionary (Fifth Edition, West Publishing Company, 1979). As ownership is a

critical element of this visa classification, the Service may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. Evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. The record, as it is presently constituted, does not contain evidence to show that the foreign entity actually purchased the above mentioned 200 shares of the petitioner's stock. Therefore, the petitioner has not sufficiently established that a qualifying organization exists between the foreign and U.S. entities.

The second issue in this proceeding is whether the beneficiary has been employed abroad and will be employed primarily in a 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 petition describes the beneficiary's duties for the past three years abroad as "president."

The petition describes the beneficiary's duties in the proposed position in the United States as "president of the company."

In an undated letter, the petitioner states that the beneficiary has been a chief executive since the establishment of the company in 1984. He will be responsible for all policy making, including hiring and firing of employees and all other necessary decisions for the profitable operation of the company. The letter states further that regarding the management and personnel structure of the organization, the company has approximately 85 employees including office staff and labor for the export and import of the business. The letter makes no reference as to whether these responsibilities are those the beneficiary handled while employed abroad. Moreover, the record, as it is presently constituted, contains no evidence of the company having 85 employees including office staff and labor. Finally, the letter states that in staffing the U.S. organization, the beneficiary will be hiring two more employees, the vice president and secretary. The vice president will be responsible for quality control and marketing of the company. The secretary will be assisting the president and vice president in day to day activities and keeping communications with the clients. The letter makes no mention of the vice president having a subordinate staff.

Upon review of the record, the petitioner has not presented convincing evidence to show that the beneficiary had been employed abroad and will be employed in the United States in an executive or

managerial capacity. The beneficiary's duties abroad and in the United States are not reflective of duties that are of an executive or managerial nature. There is no evidence to establish that the petitioner will employ a subordinate staff of professional, managerial, or supervisory personnel in the United States who will relieve the beneficiary from performing nonqualifying duties. The record does not show the beneficiary has been working abroad or will be working in the United States with a professional staff. There is no evidence to establish that the beneficiary has been or will be supervising a staff of executive, supervisory or professional personnel.

The record is not sufficient in demonstrating that the beneficiary has been or will be primarily engaged in exercising managerial control and authority over a function, department, subdivision or component of either the U.S. or foreign entities. The record does not sufficiently show that the beneficiary has been employed abroad and will be functioning in the United States at a senior level within an organizational hierarchy other than in position title.

In conclusion, the description of the beneficiary's duties do not demonstrate that the beneficiary has been or will be employed managing or directing the management of a department, subdivision, function, or component of the petitioning organization. It must be evident from the documentation submitted that the majority of the beneficiary's actual daily activities will be primarily managerial or executive in nature. Based on the evidence submitted, it cannot be found that the beneficiary has been or will be employed primarily in an executive or managerial capacity.

The final issue is whether the foreign entity is doing business as required by the regulations.

The regulation at 8 C.F.R. 214.2(1)(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.

The petitioner submitted unaudited copies of its 1995-October 1998 financial statements. This evidence does not show that the foreign entity is actively engaged in "doing business" as defined by regulation. Further, these statements have not been substantiated by other evidence of record such as income tax returns, annual reports, contracts, bills of lading, invoices, commercial bank account statements, etc., to reflect the foreign entity's continuous business activities. Therefore, the petitioner has not demonstrated the foreign entity's financial ability to commence

doing business in the United States. For these aforementioned reasons, the petition may not be approved.

In visa petition proceedings, the burden of proof 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.