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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

APR 10 2003

File: EAC-01-208-54886 Office: Vermont Service Center Date:

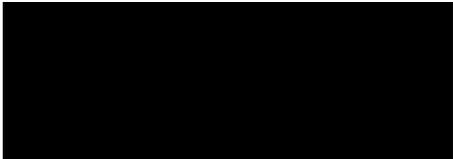
IN RE: Petitioner:
Beneficiary:



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)

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ON BEHALF OF PETITIONER:



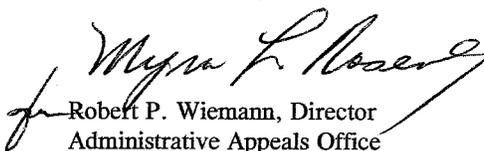
INSTRUCTIONS:

This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner, a company engaged in the import of footwear and the export of scrap metals, seeks authorization to employ the beneficiary temporarily in the United States as its manager. The director determined that the petitioner had not established that there is a qualifying relationship between the U.S. and foreign entities or that the beneficiary had been employed abroad or would be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel argues that a stock certificate was issued in error and that there is a qualifying relationship between the U.S. and foreign entities. Counsel further states that the beneficiary is employed in a primarily managerial or executive capacity.

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.

Title 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 2001 and that it is a branch of [REDACTED] located in Punjab, India. The petitioner declares one employee and seeks to employ the beneficiary for a period of one year.

The first issue to be addressed in this proceeding is whether the petitioner has submitted sufficient evidence to establish that there is a qualifying relationship between the U.S. and foreign entities.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

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 (l)(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.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(I) state:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(J) state:

Branch means an operating division or office of the same organization housed in a different location.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(K) state:

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.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(L) state, in pertinent part:

Affiliate means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner, [REDACTED] claims to be a branch of the foreign entity, [REDACTED]. In denying the petition, the director stated that, since initial documentation did not clearly establish evidence of a qualifying relationship between the United States company and the foreign company, additional evidence addressing this concern was requested on July 27, 2001. The director further states that "In response, on October 23, 2001, you submitted copies of a share certificate indicating that the beneficiary, [named beneficiary] is owner of 200 shares (of the United States entity). A partnership affidavit previously submitted indicates that the beneficiary is the holder of 33 percent of the foreign company, Rupi Exports." The director concluded, therefore, that a qualifying relationship did not exist between the United States and a foreign entities.

On appeal, counsel argues that there is a qualifying relationship between the U.S. and foreign entities and that a petitioner's stock certificate was issued in error to the beneficiary, rather than in the corporate name [REDACTED]. Counsel submits a stock transfer notice indicating that 200 shares of the petitioning entity were transferred from the beneficiary to [REDACTED] on February 11, 2001. Counsel also submits stock certificate #2 indicating that [REDACTED] owns 200 shares of [REDACTED].

Regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for

purposes of this nonimmigrant visa petition. *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes* 18 I&N Dec. 289 (Comm. 1982); see also *Matter of Church of Scientology International*, 19 I&N Dec. 593 (BIA 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. Id.

On appeal, counsel declared that the petitioner's initial stock certificate was issued in error and submitted stock certificate #2 indicating that [REDACTED] owns 200 shares of [REDACTED] the United States entity. This claim appears to be corroborated by partnership documentation already contained in the record. The record now indicates that the foreign entity, a family partnership, owns the United States entity thereby validating the petitioner's claim that the United States entity is a subsidiary of the foreign entity. It is therefore concluded that a qualifying relationship exists between the United States entity and the foreign entity and that the petitioner has overcome this portion of the director's decision.

The second issue to be addressed 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 stated that the beneficiary has worked for the foreign entity as a "whole time" director since its inception until he became executive manager of the United States entity in June 2001. In this position, the petitioner stated that the beneficiary plans, develops and establishes policies and objectives.

In a letter dated July 27, 2001, the Service requested that the petitioner submit, in part, documentary evidence corroborating the beneficiary's work abroad in a qualifying managerial or executive position as well as evidence that the beneficiary's current duties for the United States entity are those of a qualifying manager or executive.

In response to the request for additional information, the petitioner submitted the following description of the beneficiary's duties:

Duties of [named individual] in INDIA

I hereby certify that [named individual, the beneficiary] [is] Managing Partner of M/s [REDACTED]. He has performed his duty as Managing Director of this company. He has looked after every thing [sic] like Bank Operation[s] in the morning time, Sale & purchased [sic] in [the] afternoon & all reports of supplies in the evening. He has also visited for [sic] ordered & exhibit trade shows overseas like USA, Italy, Tanzania, Kenya, Hong Kong, Sri Lanka, Dubai Bangladesh, etc. He is 33% partner with me in this company since 1997. He is getting 36,000 salary per annum & profit sharing.

United States Entity

The beneficiary looks after banking transactions e.g. deposits, withdrawals, payments, place[s] orders to foreign entity (India), books orders from the United States market, supervises quality of the items to be shipped, explores business and opens stores in United States, does all the legal, [sic] paper work with regards to signing lease, opening bank account, coordinating with the Certified Public Accountant with regards to filing of quarterly tax returns, sales tax.

On appeal, counsel states, in pertinent part, that:

The description of the job duties in India with [REDACTED] was incorrectly phrased. Rather than "looking after" banking, sales and purchases, the beneficiary oversaw and directed these activities through his subordinate managers and staff accountant.

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. The petitioner's descriptions are insufficient in detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as booking orders, supervising quality of the items to be shipped, exploring business and opening stores doing the legal work, paper work, signing leases, opening bank accounts and coordinating with the certified public accountant, are without any context in which to reach a determination as to whether they would be qualifying. Other duties such as looking after banking, sales and reports, have not been demonstrated to be managerial or executive in nature. The use of the position title of "manager" is not sufficient.

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 comprehensive 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. It appears that the beneficiary directly supervises contractors and the accountant.

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 employed abroad or will be employed in the United States in a primarily managerial or executive capacity. For this additional 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.

