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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street NW  
Washington, DC 20536



FILE: EAC 02 024 52863 Office: VERMONT SERVICE CENTER

Date: DEC 3 - 2003

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 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 Citizenship and Immigration Services (CIS) 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 Director, Vermont Service Center, denied the nonimmigrant visa petition (L-1A). The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, [REDACTED], claims that it is a subsidiary of [REDACTED] a Brazilian entity. The U.S. entity states that it plans to export and import technical and computer devices and related goods. The petitioner was incorporated in the State of New Jersey on June 29, 2001. The petitioner now seeks to hire the beneficiary as a new employee to open its U.S. office. The U.S. entity, therefore, is petitioning to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) for one year. The petitioner seeks to employ the beneficiary as the U.S. entity's president at an annual salary of \$40,000. The director determined that the petitioner had submitted vague evidence regarding the beneficiary's proposed duties; consequently, the director concluded that the new office would, within one year of its inception, be unable to support a manager or an executive. The petitioner filed an appeal through counsel. Counsel did not, however, submit a brief; instead, counsel resubmitted the petitioner's business plan.

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 meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, 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.

Under 8 C.F.R. § 214.2(1)(3), 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 with 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 serves in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Pursuant to 8 C.F.R. § 214.2(1)(3)(v), 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 of 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 paragraph (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.

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

The term "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:

The term "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.

When examining the executive or managerial capacity of the beneficiary, CIS will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(1)(3)(ii). On Form I-129, the petitioner described the beneficiary's proposed job duties as: "Supervise managers and technical support for import and export managers [sic]. Completely handle responsibilities [sic] of US operations. Provide key strategic technology and directives. Set policy." In a September 17, 2001 letter attached to Form I-129, the petitioner described the beneficiary's proposed work duties:

[The beneficiary's] role as President will be supervising and controlling the US. [sic] Operations of our company at our New Jersey office. She will evolve new strategies and programs to expand our trading business and thus to [sic] contribute to the expansion of [the petitioner's] business in the United States. She will work closely with [the petitioner's] senior management in the development and growth of these trade deals in the US marketplace.

She will evaluate and review the current and proposed trade deals/projects.

She will then direct the technical teams to modify and upgrade these import/export projects. The purpose of this import mission is to develop consistent trade between the US and Brazil.

Her planned duties in the US will include:

- 1) Supervis[ing] a team of project managers and technical support and service managers who provide technical support to import/export projects.
- 2) [C]ompletely handl[ing] the responsibilities of all the operations in the United States which include the following[:]
  - a) Supervise a team of top management personnel who run the day to day operations at [the petitioner] in the United States[;]
  - b) Provide key strategic technology and project management directives to stay ahead in the trading market place[;]
  - c) Manage finance operations, Personnel and Human Resources development policies[;]
  - d) Set guidelines for quality management[, ] technical support management, and attend trade shows.
- 4) Report back to the parent company in Brazil. [Misnumbering in original.]
- 5) Identify potential trading companies with a view to export to European countries. [Misnumbering in original.]

On November 26, 2001, the director issued a Request for Evidence to obtain further information about the beneficiary's proposed duties. In pertinent part, the Request for Evidence stated:

Submit an organizational chart for the U.S. entity and indicate where the beneficiary will assume [her] role in a managerial capacity.

Submit a comprehensive description of the beneficiary's proposed duties. Also indicate how the beneficiary's duties will be managerial or executive in nature.

Submit a complete position description for and educational credentials of all of the beneficiary's subordinates in the United States. Submit a breakdown on the number of hours devoted to each of the employee's job duties on a weekly basis.

On February 19, 2002, the petitioner responded: "Our management and personnel structure consists of the president, vice president, and general manager. We intend to employ 7 persons in the United States. The beneficiary will be employed as President on a permanent and full time basis." The petitioner provided an hourly breakdown of the beneficiary's proposed weekly duties:

- Perform[s] executive functions including the following[:] direct[s] management of organization, establish[es] goals, policies and sets standards, exercises wide latitude in discretionary decision making (9 hours).
- Plans, develops, and establishes policies and objectives of our organization in accordance with board directives (9 hours).
- Discuss[es] with [sic] company officers who plan business objectives, develops organizational policies to coordinate functions and operations between divisions and departments, establishes responsibilities and procedures for attaining company objectives (8 hours).
- Studies activity reports and financial statement to determine progress and status in attaining objectives and revises objectives and plan[s] in accordance with current conditions (5 hours).
- Judge[s] performance of executives including the Vice President, and General Manager, who are the subordinate supervisors of [the] President, for compliance with company policies and objectives and . . . contributions in attaining objectives of company (4 hours).
- Plans and develops industrial, labor and public relations with customers, employees, stockholders and public (3 hour[s]).

- Presides over board of director meetings . . . (2 hour[s]).

In regard to the beneficiary's proposed duties, a note appended to the company's business plan stated, "[The beneficiary] whose primary function is to monitor the overall performance of other employees is not involved with day to day operations."

A large portion of the petitioner's description of the beneficiary's duties paraphrase the statutory and regulatory executive and managerial requirements. For instance, the petitioner asserted that the beneficiary would direct management, establish goals and policies, and exercise a wide latitude in discretionary decision-making. Going on record without supporting documentary evidence is insufficient to meet the burden of proof in these proceedings. *Ikea US, Inc. v. INS*, 48 F.Supp. 2d 22, 24-5 (D.D.C. 1999); see generally *Republic of Transkei v. INS*, 923 F.2d 175 (D.C. Cir. 1991) (discussing burden the petitioner must meet to demonstrate that the beneficiary qualifies as primarily managerial or executive); *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, the petitioner's recitation of the proposed duties is so vague that it fails to convey an understanding of the beneficiary's proposed daily duties. For example, the petitioner does not explain the meaning of "plan[ning], develop[ing], and establish[ing] policies and objectives . . . in accordance with board directives." Additionally, the petitioner gives no concrete examples to define "develops organizational policies to coordinate functions and operations between divisions and departments, establishes responsibilities and procedures for attaining company objectives." Similarly, the petitioner does not quantify the phrases, "evaluate and review the current proposed trade deals/projects" or "evolve new strategies and projects to expand . . . [the] trading business." As noted above, going on record without supporting documentary evidence is insufficient to meet the burden of proof in these proceedings. *Ikea US, Inc. v. INS, supra*; *Republic of Transkei v. INS, supra*; *Matter of Treasure Craft of California, supra*. In sum, the beneficiary's proposed duties are so undefined that it is impossible for the AAO to determine whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

Finally, the petitioner's business plan fails to establish that the company will support a managerial or executive position within one year. In the section titled "Personnel Plan," the petitioner merely provides a table with a projected "headcount" of nine, 13, and 15. The table does not explain the basis for these projections, list the personnel whom the company plans to hire, or even provide a timeline in which the petitioner expects to complete the hiring. Consequently, pursuant to 8 C.F.R. § 214.2(1)(3)(v)(C), the petitioner has not demonstrated that the petitioner's operations will support a managerial or executive employee with one year of the approval of the petition.

Beyond the decision of the director, the AAO notes that, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. See section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L); 8 C.F.R. § 214.2(1)(3)(iii); 8 C.F.R. § 214.2(1)(3)(v)(B).

According to the Form I-129, the beneficiary's duties during the past three years entailed "overall corporate management, purchasing management, personnel and finance management." A labor agreement in the record indicates that her title abroad was vice president. As proof that the beneficiary worked abroad in a qualifying position, the petitioner submitted the beneficiary's pay stubs dated April 30, 1996 through July 30, 2000. These pieces of evidence not describe the beneficiary's duties abroad in any detail, however. As established earlier, going on record without supporting documentary evidence is insufficient to meet the burden of proof in these proceedings. *Ikea US, Inc. v. INS, supra; Republic of Transkei v. INS, supra; Matter of Treasure Craft of California, supra.* In sum, the beneficiary's past duties are undocumented and so vague that it is impossible for the AAO to determine whether, within three years preceding the beneficiary's application for admission into the United States, the beneficiary worked in a managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. As the appeal will be dismissed, the AAO will not examine this issue any further.

Also beyond the decision of the director, the AAO observes that the petitioner has submitted no evidence that it has obtained sufficient physical premises to house the new office. See 8 C.F.R. § 214.2(1)(3)(v)(A). Once again, going on record without supporting documentary evidence is insufficient to meet the burden of proof in these proceedings. *Ikea US, Inc. v. INS, supra*; *Republic of Transkei v. INS, supra*; *Matter of Treasure Craft of California, supra*. As the appeal will be dismissed, the AAO will not examine this issue any 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; *Transkei*, 923 F.2d at 178 (holding burden is on the petitioner to provide documentation); *Ikea*, 48 F.Supp at 24-5 (requiring the petitioner to provide adequate documentation). The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.