

U.S. Department of Homeland Security

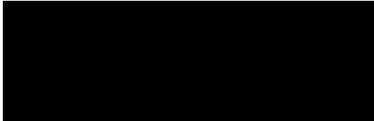
Citizenship and Immigration Services

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



File: LIN 02 254 53822

Office: NEBRASKA SERVICE CENTER

Date:

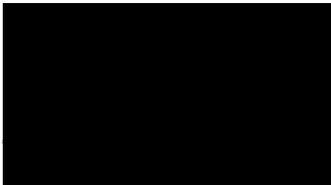
DEC 17 2003

ON 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:



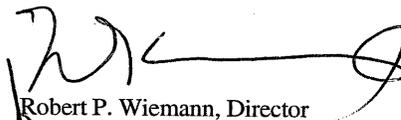
**INSTRUCTIONS:**

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

The petitioner is a corporation engaged in international consulting which seeks to employ the beneficiary temporarily in the United States as its president for a period of two years. The director determined that the petitioner had not established a qualifying relationship with a foreign entity. The director also determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel states that the director ignored the letter of support submitted by the petitioner's vice-president outlining the beneficiary's duties as president. Counsel further states that somehow CIS has the opinion that in a two-person corporation, such as the petitioner will be if allowed to bring its president from Italy, that presidents of American corporations are window dressing and not executives. Counsel indicates that CIS is blinded by its concept of sole proprietorship and fails to recognize that the beneficiary is the conduit by which the contracts obtained by the petitioner are fulfilled.

Counsel submits a recent contract between an Italian company and the petitioner signed by the beneficiary. Counsel argues that this contract along with the others previously submitted clearly demonstrate that the beneficiary is and has been actively working with the petitioner for at least one year prior to the submission of the petition. Counsel further argues that these contracts challenge the director's conclusion that there is some contradiction in what the petitioner claims the beneficiary does in Italy.

The regulations at 8 C.F.R. § 214.2(1)(3) state 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.

The first issue to be discussed in this proceeding is whether the petitioner and the foreign entity are qualifying organizations. The petition indicates that the U.S. corporation is the parent of the beneficiary's sole proprietorship in Italy.

The regulations at 8 C.F.R. § 214.2(1)(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 (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(1)(1)(ii)(I) state:

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

The regulations at 8 C.F.R. § 214.2(1)(1)(ii)(J) state:

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

The regulations at 8 C.F.R. § 214.2(1)(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.

The regulations at 8 C.F.R. § 214.2(1)(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.

In this case, the beneficiary holds all of the issued stock of the United States Corporation (100 shares.)

To establish that the beneficiary is operating a qualifying foreign entity in Italy, counsel submitted a copy of the beneficiary's Italian passport to demonstrate his arrivals and departures from the United States and his "entry to Italy for the period required by law." Counsel also submits a copy of the beneficiary's 2002 Italian tax return (without any certified translation) to show that he was operating a foreign business entity in that country as a sole proprietor.

The regulations at 8 C.F.R. § 103.2(b)(3) state that any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Therefore, the Italian tax return may not be considered as evidence in this matter. Even had the petitioner submitted a translated copy of the beneficiary's 2002 Italian tax return, the contents of that document alone would not have been sufficient to establish that the beneficiary owns and controls both companies. Based on the evidence submitted, it is determined that the petitioner has not established that a qualifying relationship between the United States corporation and a qualifying foreign entity exists. For this reason, the petition may not be approved.

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.

The petitioner is a corporation that originated in the State of Ohio on September 14, 1999. The petitioner filed its petition on August 6, 2002. Since the petitioner had been doing business for more than one year at the time the visa petition was filed, it shall not be considered under the regulations covering the start-up of a new business.

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.

The next issue in this proceeding is whether the petitioner has established that the beneficiary has been employed abroad for one continuous year within the three years preceding the filing of the petition in a primarily managerial or executive capacity by a qualifying organization.

The petitioner describes the beneficiary's job duties abroad as follows:

Mr. Villa on his own and on behalf of Istra seeks Italian companies interested in selling their products in the United States. Mr. Villa, while in Italy, identifies the companies and their products (mostly in the security field), negotiates with the Italian company a contract for Istra to provide services in the United States. These services can include among others, consulting services to identify potential markets, distribution services or seeking in the United States a partner for the distribution of the Italian company's product. The reverse is also the case. US companies that are interested in selling its products in Italy contract with Istra, who in turn gives the contract to Mr. Villa who sets up a distribution process or contracts with an Italian company for distribution.

Upon initial submission, the petitioner forwarded three contracts it has entered into with Italian companies allowing it to act as their distributor of goods and services in the United States. On appeal, counsel forwards a fourth distribution contract entered into with another Italian company.

The record contains no evidence that the beneficiary's company employs anyone abroad or conducts regular business activities in Italy. It is determined that record contains insufficient evidence to demonstrate that the beneficiary has been acting in a managerial or executive capacity abroad. The Service is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title. For this reason, the petition may not be approved.

The next issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity.

The petitioner describes the beneficiary's proposed job duties in the United States as follows:

Mr. Villa, Istra's organizer, has been directing and operating the company from Italy. He has traveled to the United States to provide guidance and direction to the U.S. based staff. However, the company growth and

potential have reached the level where Mr. Villa's presence in the United States is indispensable for its future. Mr. Villa has the expertise, knowledge, and resources to be the company's Chief Executive Officer.

The evidence submitted is insufficient to establish that the beneficiary will be acting in a managerial or executive capacity at the petitioning firm in the United States. For the entire year of 2001, the corporation employed one person as its vice president, had gross receipts or sales of only \$62,495, paid no salaries or wages and paid no compensation to its officers. The record is not persuasive in demonstrating that the beneficiary's duties would include managerial and/or executive control and authority over a function, department, subdivision or component of the United States company. Additionally, the petitioner has not provided evidence that the beneficiary would be managing a subordinate staff of professional, managerial or supervisory personnel who relieve him from performing non-qualifying duties. It appears that the beneficiary would be the individual performing the necessary tasks for the ongoing operation of the company, rather than primarily directing or managing those functions through the work of others. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). 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.