

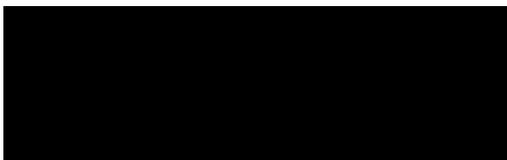
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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



FILE: WAC 02 152 50366 Office: CALIFORNIA SERVICE CENTER Date: **DEC 24 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 nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter remanded to him for further consideration and action.

The petitioner claims to be an internet-based hotel and travel reservation company. The petitioner seeks to employ the beneficiary temporarily in the United States as its general manager. The director determined that the petitioner failed to establish that the beneficiary has been employed by the foreign entity in a managerial or executive capacity.

On appeal, petitioner disagrees with the director's determination and asserts that the evidence submitted is sufficient to establish that the beneficiary's duties have been primarily managerial or executive in nature.

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 regulation at 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, 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.

According to the documentary evidence contained in the record, the petitioner was incorporated in 2000 as an internet-based hotel and travel reservation company. The petitioner states that the U.S. entity is a subsidiary of Asiatravel.com Holdings, Ltd, located in Singapore. The petitioner declares one employee and \$5,813.00 in gross income. The petitioner seeks to employ the beneficiary as its general manager for a period of three years, at a yearly salary of \$36,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been employed by the overseas entity in a primarily managerial or executive capacity.

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.

It is noted that the petition in the instant case was filed April 3, 2002. The beneficiary's resume lists his past employment as follows:

Asiatravel.com Holdings Ltd., Singapore
July 1, 2001 - Present as Director for Business
Development

- Responsible for developing the USA Business Market.
- Responsible for signing-up contracts in the US for prospective business partners such as hotels, resorts, tour operators and wholesalers.
- Setting-up business strategies for the US Market.

AT Phil., Inc., Ortigas Center, Pasig City, Philippines

October 1, 2000-June 30, 2001 as General Manager

January 1, 2001-September 30, 2001 as Assistant General Manager

- Responsible for the overall management of the business operations.
- Reporting directly to the Vice President for Area 2.
- Handling over 60 staffs/employees.
- Handling other managers and organizing meetings with them and staffs to improve the system of the company and discussed some issues related to it.
- Attending General Manager's Meetings.
- Creating new business strategies to increase sales productions.
- Negotiating tie-ups and business arrangement to expand more market.
- Developing more perks and discounts for the clients/guests.
- Expanding more business opportunities/markets like the balikbayan and airticketing.
- Checking Asiatravel Philippine websites for accuracy and better presentation.
- Reporting to clients like hotels and resorts.
- Preparing financial budgets and other related financial statements.

In a letter of support dated May 16, 2002, the president of the U.S. entity provided a certificate of employment for the beneficiary, that reiterates his duties and responsibilities as provided in the beneficiary's resume. The president further stated that the beneficiary was selected by the foreign entity to develop and manage the U.S. office and that he has worked for the company abroad in a management capacity since December 1997. The president also stated that the beneficiary has proven his skills, abilities, professionalism and loyalty through his accomplishments in working for the foreign entity in the

Philippines and Singapore and that the beneficiary was instrumental in developing the company's Chinese market.

In a second letter of support dated April 1, 2002, the president of the U.S. entity describes the beneficiary's current duties with the foreign entity as:

Mr. Gonzales is currently employed as the Director for Business Development for the parent company in Singapore. The major role of his position is to develop strategies that will be successful in the U.S. market. We have approved several proposals of Mr. Gonzales and have determined that he should direct our U.S. operation using his innovative and novel business ideas.

The petitioner submitted copies of payroll records for the AT Phil, Inc., covering the period from May 2000 to June 2001. The record indicates that the beneficiary was on the company payroll during this period. The record also shows that the beneficiary approved these payroll records by signing off as one of two approving officials.

The petitioner provided a management chart of AT Phil Inc., as of May 4, 2001, which depicts the beneficiary as general manager, with more than 42 employees listed as his subordinates. The subordinates are listed on the management chart by department, name, division within the company, and title.

The petitioner also provided a management chart of AsiaTravel.com Holdings Ltd-Corporate Office, which depicts the beneficiary as "Director for Business Development, USA." There are no subordinates listed under the direction of the beneficiary.

The director determined that the record did not establish that the beneficiary was engaged in primarily managerial or executive duties for the foreign entity. The director states that the beneficiary is currently employed as the Director for Business Development for the foreign entity. The director continues by stating that the letter dated April 1, 2002 describes the beneficiary's duties as director for business development. The director further states that a review of the foreign entity's organizational chart indicates that there are no employees under the beneficiary's supervision. The director states that the petitioner has failed to submit evidence sufficient to establish that the beneficiary has been functioning in a managerial or

executive capacity or that he has been managing a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing non-qualifying duties. The director also stated that there was no indication that the beneficiary had been exercising significant authority over generalized policy.

On appeal, counsel disagrees with the director's decision and submits evidence in support of approving the L-1A nonimmigrant visa petition. Counsel contends that the director erred in not taking all pertinent evidence into consideration before rendering his decision. Counsel also asserts that the beneficiary's job duties for the three years preceding the filing of the petition in this case should have been examined to determine whether within that time period the beneficiary was employed for one continuous year in a managerial or executive capacity.

Counsel asserts that the evidence establishes that the beneficiary was employed by a subsidiary of the foreign entity, AT Phil, Inc., from January 2000 through June 2001 in a managerial capacity, thus satisfying the requirement of being employed abroad in a managerial or executive capacity for one continuous year within the three years preceding the filing of the petition. Counsel further states that the AT Phil company payroll records clearly indicate that the beneficiary, by approving the payroll for dozens of employees, performed a managerial function. Counsel also contends that the management chart of AT Phil that was submitted into evidence listed over 40 people who the beneficiary managed during his employment as a general manager. Lastly, counsel claims that the letter of certification submitted by the petitioner certifies the beneficiary's employment as general manager from January 2000 through June 2001, and lists several duties performed by the beneficiary as manager during this period.

The petitioner resubmits on appeal a copy of the cover letter dated April 1, 2002, which indicates the beneficiary's positions as general manager and assistant general manager from January 2000 through June 2001; the beneficiary's resume, which depicts his employment history as well as education, training and certifications received; the foreign entity's organizational charts that demonstrate the beneficiary's position as general manager; AT Phil's payroll records from May 2000 through June 2001, which indicates the beneficiary's employment and authority to approve the payroll of 40 plus employees; a AT Phil's employee details page, which indicates the subordinate employee's names, date of hire, job title, and salary; and letters from the U.S. and foreign entities certifying the beneficiary's position as general manager. The petitioner also submits copies of contracts and

interoffice memorandum demonstrating the beneficiary's position as general manager and assistant general manager from January 2000 through June 2001.

In the instant case, the petitioner has submitted sufficient evidence to establish that the beneficiary has been employed for one continuous year, within the three years preceding the filing of the petition in a managerial or executive capacity. The record reflects that the petitioner submitted a copious amount of evidence to show that the beneficiary had been employed in a managerial capacity from January 2000 through June 2001. Based upon review of the entire record, the evidence submitted sufficiently establishes that the beneficiary primarily performed duties as general manager and assistant general manager for one continuous year abroad. Therefore, the petitioner has overcome the objections of the director.

However, the petition may not be approved, as it has not been sufficiently demonstrated that a qualifying relationship existed between Asia Travel.Com, USA and AT Phil Inc., Philippines. The regulation at 8 C.F.R. § 214.2(1)(3)(iii) requires that the petitioner submit evidence to establish 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. In the instant case, although the evidence establishes that the beneficiary was employed by the AT Phil Inc. as a general manager and assistant general manager during the period of January 2000 through June 2001, there is no evidence that demonstrates the Philippine company was a parent, affiliate, or subsidiary of the petitioning U.S. entity during that time. There has been no evidence produced that establishes ownership and control of one entity over that of the other, or ownership and control by one of two legal entities or by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. See 8 C.F.R. §§ 214.2 (1)(1)(ii)(G), (I), (J), (K), and (L). The record is void of any copies of AT Phil Inc.'s annual report, minutes of stockholders meetings, a list of owners, articles of incorporation, evidence of stock distribution, stock certificates, or stock certificate ledgers for that period which could serve as evidence of a qualifying relationship. Therefore, although the evidence establishes that the beneficiary served in a managerial or executive capacity for one continuous year, the petitioner has failed to establish any qualifying relationship between the U.S. entity and AT Phil, Inc., which employed the beneficiary.

Beyond the decision of the director, the petitioner has failed to produce evidence to establish that the U.S. entity is doing business or that the beneficiary will be employed by the U.S. entity in a primarily managerial or executive capacity. As the appeal will be dismissed, these issues will 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.