



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

[Redacted]

File: SRC 02 086 53536 Office: TEXAS SERVICE CENTER

Date: FEB 27 2003

IN RE: Petitioner:
Beneficiary:

[Redacted]

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:

[Redacted]

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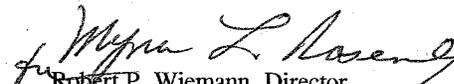
INSTRUCTIONS:

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 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 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, Texas Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner operates a portion of a convenience store. It seeks to employ the beneficiary temporarily in the United States as its president and CEO. The director determined that the petitioner had not provided evidence that the beneficiary had been or would be employed in a managerial or executive capacity.

On appeal, counsel states that the director erred in failing to approve the petitioner's L-1A nonimmigrant visa petition because the evidence showed that the beneficiary was indeed an executive and manager of his foreign operation. Counsel further states that the beneficiary has serviced as managing director and partner of the business abroad for many years and that his responsibilities were clearly executive and managerial in nature. Counsel indicates that the foreign business has 40 employees whom the beneficiary supervised and managed, including other managers, the foreign business had substantial sales and operations and the evidence submitted shows that the beneficiary will be doing substantially executive and managerial duties in the United States in developing and managing his U.S. business.

Counsel explains that the petitioner has invested \$22,314 in its retail business in Jasper, Texas and that this business generates approximately \$60,000 per month. Counsel further explains that plans to expand the staff have been put on hold in that the L-1A petition was denied. Counsel states that in addition, the Indian parent company was scheduled to bring to the United States over \$50,000 in both 2002 and 2003 for investment purposes, but that these investments (as well as plans for expansion, marketing, and distribution) have been put on hold until the appeals process has been completed.

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.

8 C.F.R. § 214.2(l)(1)(ii), in part, states:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks

to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge. 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 issue to be addressed in this proceeding is whether the petitioner has established that 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:

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

iii. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In the petition the petitioner described the beneficiary's job duties abroad as those of a managing director. The duties of the position abroad are described on appeal as follows:

Prior to his transfer to the U.S. [REDACTED] served as the Managing Director of Gulam Hussain and Company continuously from 1982 until 2001. As Managing Director, he served as the chief executive officer of the Company and was primarily responsible for marketing, budgeting, expansion, purchasing, financing, and accounting. All subordinate managers and employees reported to him and he had the ultimate authority to hire and fire, as well as to contract for and bind the Company in any way he saw fit. He was the senior executive of the corporation and was ultimately responsible for all its major activities.

On appeal, counsel states that the company abroad, Gulam Hussain and Company, currently has 40 employees, and during the years 2000 and 2001 the foreign entity averaged over \$900,000 in sales. At the time of filing, the record indicates that the beneficiary supervised 40 persons abroad. As noted by the director, the record does not substantiate that claim, as the payroll records submitted by the petitioner listed only 17 employees. Additionally, the director noted that the payroll records forwarded for consideration did not suggest that employees abroad were engaged in roles that would support a finding that the beneficiary filled a managerial or executive position abroad.

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.

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

Will serve as President and CEO of U.S. Subsidiary; senior-most Corporate Officer in charge of planning, expansion, hiring, banking accounting, marketing, budgeting, etc.

The record shows that the current staff of the United States operation consists of a manager and a cashier. The manager works fifty hours per week and the cashier works forty hours per week. The record indicates that the petitioner plans to hire two more people.

Counsel's assertions concerning the managerial and executive nature of the beneficiary's future duties are not persuasive. The petitioner's descriptions of the beneficiary's proposed job duties are not sufficient to warrant a finding of managerial or executive job duties. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec.533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 BIA 1980). Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

It appears that the beneficiary would be performing the necessary operations of the petitioner. The petitioner has provided no persuasive description of the beneficiary's duties that would demonstrate that the beneficiary will be managing or directing the management of a function, department, subdivision or component of the company. The petitioner has not shown that the beneficiary will be functioning at a qualifying senior level within an organizational hierarchy.

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.