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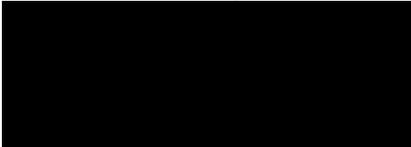
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U.S. Department of Homeland Security

Citizenship and Immigration Services

D7

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



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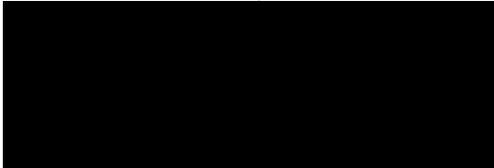
File: SRC 02 118 54112 Office: TEXAS SERVICE CENTER Date:

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

The petitioner is engaged in financial and investment services. The firm also operates a self-serve gas station. It seeks to continue to employ the beneficiary temporarily in the United States as its chief executive officer for an additional period of three years. The director found that the petitioner had not established that a qualifying relationship exists between the U.S. employer and a foreign entity. The director also found that the petitioner had not established that the foreign affiliate or subsidiary was currently doing business. The director determined that the petitioner had not shown that the U.S. company had been doing business for the previous year. The director also determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel argues that a qualifying relationship does exist between the foreign employer and the U.S. company. Counsel outlines the documents that have been submitted for the record and asserts that they have established that the petitioning entity has been doing business for the previous year. Counsel explains that on January 16, 2002, the petitioner acquired the exclusive rights to distribute petroleum at a Shell Gas convenience store and gas station pursuant to a lease. Counsel explains that this lease permits the petitioner to act as a "jobber" for the gas station in exchange for the sum of \$10,000 per month. Counsel states that at the end of 2001, the petitioner employed two individuals, and during the first quarter of 2002, following its acquisition of the jobber contract, the company employed three individuals.

Counsel submits the following documents to establish that the foreign enterprise is currently and has been doing business:

1. A certificate from a chartered accountant dated October 8, 2002 documenting the net worth of Satco Securities & Financial Services, Ltd. as of September 30, 2002.
2. A balance sheet for Satco Securities & Financial Services Limited as of March 31, 2002.
3. A bill from the National Stock Exchange of India Limited to Satco Securities & Financial for trades that Satco had made during the period January 9, 2002 through September 30, 2002.

The record shows that Satco Securities & Financial Services Ltd. owns 1,000 shares of Satco Global Inc. and that the shares were issued on May 24, 2000. The record contains no evidence that any other person or organization owns any other shares of the

petitioning entity. Based on the record and the information provided on appeal, it is determined that the petitioner has established that a qualifying relationship exists between it and Satco Securities & Financial Services Ltd., its parent company abroad. Additionally, the petitioner has established that the foreign entity was doing business at the time of filing. The petitioner has also shown that the U.S. company had been doing business for the previous year prior to March 4, 2002, the date this visa petition was filed.

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 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.

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.

In a letter dated February 26, 2002, the petitioner describes the beneficiary's job duties in the United States as follows:

In his capacity as Chief Executive Officer, Mr. [REDACTED] continues to direct the entire US organization. He will continue to direct and be in complete control of the company's financial, marketing and administrative duties. He will continue to have authority to bind, negotiate and enter into contracts on behalf of the company. He is able to enter into banking relationships; sign banking notes and borrow money on the company's behalf. He has and will continue to have full authority to hire, train and fire subordinates. He is in charge of corporate finance, marketing and expansion and growth of the company and will preside over any board meetings. He is also responsible for the creation of business plans and corporate development.

Mr. [REDACTED] will continue to establish and enforce corporate policy, over which he will exercise complete discretionary authority. He will continue to establish, enforce and be in full control of plans and policy in regard to corporate expansion and development (which include having full control of the company's finances, negotiating contracts, and obtaining credit). He will also continue to establish and implement all policy with regard to hiring, training and firing of all staff. As Chief Executive Officer and the senior most person in the organization, Mr. [REDACTED] will have full

control in running the entire company, and absolute unfettered authority to direct all aspects of the entire US organization.

The petitioner's U.S. Corporation Income Tax Return for 2001 shows that firm had gross receipts or sales of \$25,004, paid no compensation to officers and disbursed salaries and wages of \$9,800 during the year. The record reveals that at the time of filing the petition, the petitioner employed two persons and intended to hire two more during 2002. The record does not clearly show that the petitioner had any staff that would relieve the beneficiary from performing non-qualifying duties. The petitioner has provided no comprehensive 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 in the United States. The petitioner has not shown that the beneficiary will be functioning at a qualifying senior level within an organizational hierarchy.

In this case, the evidence submitted is insufficient to establish the beneficiary will be acting in a managerial or executive capacity. The planned addition of two new employees in the future does not enhance the beneficiary's eligibility for this classification at the time the petition was filed. Consequently, 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.