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Citizenship and Immigration Services

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

File: SRC 01 071 52456

Office: TEXAS SERVICE CENTER

Date: **NOV 05 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)

IN BEHALF OF PETITIONER:

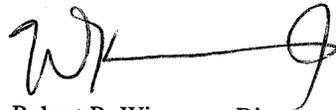
INSTRUCTIONS:

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 preference visa petition was denied by the Director, Texas Service Center. It is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to extend the beneficiary's classification as a nonimmigrant temporary worker in the United States - specifically, an intracompany transferee (L-1A manager) - pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The initial petition was approved for the beneficiary on December 23, 1999 and was valid for one year, January 1, 2000 to January 1, 2001. With his L-1A classification the beneficiary was employed as "Vice President, Sales & Marketing" by the petitioner, Peerbhai (USA), Inc., a "new office" as defined in the Code of Federal Regulations, 8 C.F.R. § 214.2(l)(1)(ii)(F). On December 28, 2000, the petitioner filed a petition to extend the beneficiary's L-1A status for three years, from January 1, 2001 to January 1, 2004.

The director denied the petition on the ground that the record failed to establish the managerial or executive capacity of the beneficiary's employment with the petitioner. The petitioner appealed the decision and asserted that the beneficiary managed an "essential function" of the business, thereby fulfilling the statutory requirement of employment in a managerial capacity.

To establish a beneficiary's L-1 eligibility under section 101(a)(15)(L) of the Act, 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.

When, as in the instant case, a petitioner seeks to extend a beneficiary's L-1 classification beyond the time period granted under an initial "new office" petition, 8 C.F.R. § 214.2(l)(14)(ii) provides that the "new office extension" petition must be accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph

- (1)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

At issue in this appeal is whether the petitioner has established that the beneficiary has been and will be employed primarily in a managerial capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), and the corresponding regulation, 8 C.F.R. § 214.2(1)(1)(ii)(B), provide as follows:

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), and the corresponding regulation, 8 C.F.R. § 214.2(1)(1)(ii)(C), provide as follows:

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 petitioner was incorporated in the State of Texas on May 12, 1999, and is headquartered in Houston. Its business is described by the petitioner as providing consulting services in the areas of information systems and business administration to the Amco Auto Insurance company, as well as operating one of that company's franchises in southeast Houston. The record establishes that the petitioner is owned 100% by a Malaysian company, Bahadur Peerbhai Pvt. Ltd. The Malaysian parent is described as a wholesaler and distributor of various consumer products. The petitioner indicates that the beneficiary went to work for the Malaysian company in January 1994 as its "Materials Manager" and served in such capacity until December 1999. At that time her one-year L-1A classification was approved and she was transferred to the new U.S. office.

In his decision the director stated that the evidence of record did not establish the managerial or executive capacity of the beneficiary's position with the U.S. subsidiary. The director noted the petitioner's initial description of the beneficiary's position as "responsible for developing and expanding our client base in the Houston area" and the organizational chart showing that the beneficiary was supervising two auto insurance agents. The director cited *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988), which held that "[a]n 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." The next line of that decision, though not quoted by the director, is just as applicable to the instant proceeding. It states that "[a] managerial or executive employee

must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor." *Id.* Furthermore, the regulations specifically provide that "[a] first-line supervisor is not considered to be acting in a managerial capacity . . . unless the employees supervised are professional." 8 C.F.R. § 214.2(l)(1)(ii)(B)(4).

As the director further explained, "[m]anagers and executives plan, organize, direct, and control an organization's major functions and work through other employees to achieve the organization's goals. Supervisors who plan, schedule, and supervise the day-to-day work of nonprofessional employees are not employed in an executive or managerial capacity." To be eligible for L-1A classification, the director continued, a beneficiary's duties must be primarily managerial or executive in nature. The test is whether "*a majority of his or her duties relate to operational or policy management, not to the supervision of lower level employees, [or the] performance of . . . operational [tasks] . . . such as doing sales work or operating machines or supervising those that do.*" (Emphasis in the original.) The director also "noted that an executive may manage a function within an organization," provided it is clearly shown "that the function is *not directly performed by the executive.*" (Emphasis in the original.)

In analyzing the evidence in the instant case, the director determined that the beneficiary exercises discretion over the day-to-day operations of the U.S. subsidiary, which is one element of managerial capacity, but that the beneficiary also directly performed many of the company's activities, which is non-managerial, and did not supervise any professional employees. In the director's view the petitioner had not demonstrated that the beneficiary was or would be supervising a subordinate staff of professional, managerial, or supervisory personnel who relieve her from performing non-qualifying (*i.e.*, non-managerial) duties. Nor had the petitioner demonstrated that the beneficiary's primary assignment with the U.S. subsidiary was or would be to direct the management of the organization, an element of executive capacity. In short, the director was "not persuaded that the beneficiary's duties . . . are primarily those of an executive or manager."

The petitioner appealed the director's decision, asserting that he "erred in denying the L-1A petition because the Beneficiary's position as described is a functional manager, wherein he manages an essential function of the business." The petitioner did not contest the director's determination that the beneficiary was not employed in an "executive capacity." The petitioner stated that a brief and additional evidence would be sent to the AAO within 30 days. As of the date of this decision, however, no such brief or evidence has been furnished by the petitioner.

Thus, the sum total of the appeal is the petitioner's bald and unsupported assertion that the beneficiary is employed in a

"managerial capacity" because she manages an essential function. The petitioner has not explained how the business function in which the beneficiary is involved qualifies as an "essential function" or how the beneficiary's activities in regard thereto qualify as "managerial" within the meaning of section 101(a)(44)(A) of the Act. It is not the job of this office to fill in the missing pieces of the petitioner's case, or to surmise its legal rationale. The petitioner bears the burden of establishing eligibility in this matter. See § 291 of the Act.

A review of the record in this case does not reveal any reason to overturn the director's decision. The salient fact is that the beneficiary's position with the U.S. subsidiary is not one invested with "managerial capacity." The record indicates that the U.S. company had four or five employees at the time the petition was filed. They included, in addition to the beneficiary, a "Chairman & C.O.O." (Sher Ali Peerbhai) and two or three auto insurance agents (the evidence is conflicting as to the exact number). As shown in the organizational chart submitted by the petitioner, the business of the U.S. subsidiary consisted of consultancy services, for which the Chairman & C.O.O. was directly responsible, and the Amco Auto Insurance franchise, for which the beneficiary served as "Vice President, Sales & Marketing." Thus, the beneficiary is not the organizational head of the U.S. subsidiary. That distinction belongs to the petitioner's Chairman & C.O.O., to whom the beneficiary is subordinate.

The auto insurance agents were directly subordinate to the beneficiary and clearly under her supervision. Thus, the record indicates that the beneficiary was a first-line supervisor of employees performing jobs that were not professional in nature. Accordingly, the beneficiary does not supervise any professionals, as required to make her supervisory duties "managerial" under section 101(a)(44)(A)(iv) of the Act. As stated therein, "[a] first-line supervisor is not considered to be acting in a managerial capacity . . . unless the employees supervised are professional."

As the director emphasized in his decision, with highlighted print, eligibility for classification as an L-1A manager depends on whether "a majority of [the beneficiary's] duties related to operational or policy management, not to the supervision of lower level employees . . . or other involvement in the operational activities of the company, such as doing sales work or . . . supervising those that do." The petitioner did not address this critical language on appeal, which was key to the director's denial of the petition. The record in this case does not establish that a majority of the beneficiary's duties relate to operational or policy management. Rather, a majority of the beneficiary's duties appear to involve non-qualifying activities associated with the day-to-day business of selling auto insurance, such as "developing and expanding [the company's] client base in the Houston area and

supervis[ing] the sales activities of our three [insurance agents]," as the petitioner's Chairman & C.O.O. stated in a letter accompanying the petition on December 28, 2000. This type of work does not constitute employment in a "managerial capacity," as defined in the Act, and renders the beneficiary ineligible for an extension of her L-1A status.

In visa petition proceedings, the petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. For the reasons discussed herein, the petitioner has not met that burden in this case.

ORDER: The appeal is dismissed.