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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, D.C. 20536



FILE: LIN 01 248 56231 Office: NEBRASKA SERVICE CENTER Date:

NOV 19 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:



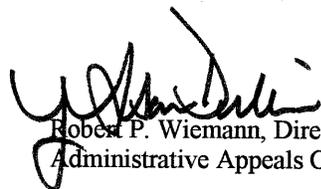
**INSTRUCTIONS:**

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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as a travel agency and tour operator. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its vice-president and secretary. The director determined that the evidence did not demonstrate that the petitioner had been doing business as defined in the regulations. The director also determined that the evidence did not establish that the beneficiary's duties for the U.S. entity involve responsibilities that were primarily managerial or executive in nature.

On appeal, the petitioner disagrees with the director's determination and asserts that the record demonstrates that the petitioner is doing business, and that the beneficiary's duties have been and will be 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)(1)(ii) states, in part:

*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.

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 services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(1)(14)(ii) states that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (1)(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.

According to the documentary evidence contained in the record, the petitioner was established in 1999 as a travel agency and tour operator. The petitioner states that the U.S. entity is a branch of [REDACTED] located in Pakistan. The petitioner declares one employee. The petitioner seeks the continuation of the beneficiary's services as its vice-president and secretary at a yearly salary of \$55,000.

The first issue in this proceeding is whether the petitioner had been doing business as defined in the regulations.

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)(H) state:

*Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petitioner initially submitted financial and business records as proof that the U.S. entity had been doing business at the time the petition was filed. The director determined that the evidence of record was not sufficient to establish eligibility and thereafter requested additional evidence from the petitioner. The director went on to specify:

Submit evidence to establish that the United States entity has been doing business for the previous year to include documentation to establish that the entity has conducted a regular, systematic, and continuous provision of goods and/or services. While the evidence indicates that the company has been paying for utilities and signed agreements, there is no evidence that the company has actually been providing goods and/or services.

In response, counsel for the petitioner referred the director to the unaudited financial report prepared for the U.S. entity, which consists of a company balance sheet and statement of income as of June 30, 2001. Counsel asserted that this report was sufficient to establish that the U.S. entity was doing business during the year preceding the filing of the petition. The petitioner did not provide any additional evidence to substantiate counsel's contention.

The director, in denying the petition, determined that the evidence submitted, including the financial report, was insufficient to establish that the petitioner was doing business.

On appeal, the petitioner disagrees with the director's decision and submits a brief letter and additional evidence to establish that the U.S. entity was doing business. This evidence includes: a sublease agreement dated January 7, 2002; a letter relating to business accounts dated April 22, 2002; a consolidation client information form dated March 21, 2002; business invoices dated March 7, 2002, April 15, 2002, and April 16, 2002; a license to do business dated January 7, 2002; a subscriber access agreement dated April 12, 2002; photos of the new office site in Norcross, GA dated April 25, 2002; and copies of other bills, invoices, and agreements dated 2002. It is noted that the initial petition was filed on August 23, 2001.

On appeal, the petitioner submits evidence that was not submitted in response to the director's request for evidence, and which was not in existence at the time the petition was filed. 8 C.F.R. § 103.2(b)(12) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts, See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). Citizenship and Immigration Services (CIS) cannot consider facts that come into being only subsequent to the filing of a petition. See *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998).

Where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition is adjudicated, evidence submitted on appeal will not be considered for any purpose, and the appeal will be adjudicated based on the record of proceedings before the director. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

Other documents submitted by the petitioner include: Articles of Incorporation; a copy of the U.S. entity's U.S. Corporation Income Tax Return for 2000; advertisements; subscription agreements; AT&T telephone and other utility bills; copies of bank statements; a copy of a business registration certificate dated August 10, 2000; a letter from the International Air Transport Association agency investigation panel dated July 19, 2001; a copy of a tax assessment and notice of tax due dated November 30, 2000; and a lease agreement between County Line Plaza and Heritage Gold dated September 1, 2000. Although this evidence is material to establishing that the U.S. entity was actually doing business, none of the evidence relates to the petitioner's provision of its services in a regular, systematic and continuous manner.

In a letter of support, dated August 22, 2001, from the law office of Lewis and Associates, counsel contends that, since the beneficiary has arrived in the United States, all county requirements have been met, a GRS reservation system has been

installed to place reservations, and contracts have been signed with Airborne Express for courier services and Gateway Travel for credit card sales services as evidence of doing business. Counsel continues by also noting the existence of the utility bills in an effort to establish that the U.S. entity was doing business. Counsel further maintains that the U.S. entity has contacted and has been doing business with various travel agencies such as Air K Travel, Inc. and Greaves Travel, LLC. However, there has been no evidence submitted to substantiate counsel's claim in reference to doing business with various travel agencies. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, the petitioner admits that in regards to its financial report "the unaudited copy was just a projection." The company tax return for 2000 reflects that the U.S. entity's gross receipt or sales figure is less than the petitioner's salary. The evidence submitted by the petitioner is not sufficient to establish that it is engaged in the regular, systematic, and continuous provision of goods and/or services as a qualifying organization. Consequently, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed in a primarily managerial or executive capacity with the U.S. entity.

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 memo dated November 9, 2000, it was decided at a board of director's meeting that the beneficiary "will work alone for the initial few month [sic] to reduce the overhead cost of the company."

Counsel presented a breakdown of the beneficiary's duties as follows:

**GENERAL ADMINISTRATION-DUTIES OF VICE PRESIDENT**

40 hour work week=100% - calculations based on minutes per hour)

Organizational Planning and Development of Objective Based Strategies	19.73%
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Coordination of Divisions and Departments To Realize Objectives and implement Strategies to Maximize Sales and Increase Productivity	30.27%
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Bottom-Up Departmental Review of Performance And Plan Revisions According to Market Conditions	10.11%
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Direct and Coordinate Financial Programs To Provide Funding for New and Continuing Promotions and Operations	39.89%
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Counsel continued by stating that, in addition to the foregoing duties, the beneficiary also handles, on a temporary basis, the day-to-day operations and point-of-sale.

In the Travel Gold, Inc. projected organizational chart for the year 2002 the beneficiary's duties are quoted as:

Responsible for planning, developing, and establishing policies and objectives of the business organization. He will confer with company officials to plan business objectives, to develop organizational policies to coordinate functions and operations between divisions and departments, and to establish responsibilities and procedures for attaining objectives. He will review activity reports and financial statements to determine progress and status in attaining objectives and revise objectives and plans in accordance with current conditions. He will also be responsible for directing and coordinating formulation of financial programs to provide funding for new or continuing operations to maximize returns on investments, and to increase productivity. He may also evaluate performance of executives for compliance with established policies and

objectives of firm and contributions in attaining objectives. He will also serve as chairman of committees, such as management, executive and sales.

The director determined that the petitioner had not submitted sufficient evidence to show that the beneficiary would be employed primarily in a managerial or executive capacity.

On appeal, the petitioner disagrees with the director's findings. The petitioner states that, because it is not a labor intensive operation, the beneficiary is capable of taking care of the responsibilities of all areas of the business. The petitioner also avers, [D]ue to the selected funds issued to me by my parent branch, I was not in the position to hire additional staff, therefore I took on the responsibility of both; Executive capacity and of the Managerial Capacity. Due to the work not being labor intense, I was able to take care of it."

The petitioner continues by asserting that the business will be able to support new employees now that the entity has relocated to another state. However, 8 C.F.R. § 214.2(1)(3)(v)(C) allows the intended United States operation (new office) one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant case, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

The petitioner also submitted a breakdown of the beneficiary's current and proposed job duties as follows:

1. Established a branch in Detroit.
2. Arranged meetings to familiarize our agency with Airlines, Consolidators, Hotel, Car rentals, Cruises and more.
3. Established a Reservation System-SABRE
4. Worked on day-to-day operations of the office to promote the business.
5. Marketed the business in-state meaning: personal visits, Flyers (copy attached) etc.
6. Marketed the business out-of-state meaning: News paper (to major states such as; GA, MI, TX, Ca, NY and more).

Other evidence submitted by the petitioner in reference to the Atlanta, GA office was not in existence at the time the petition was filed and therefore will not be considered on appeal. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts, *See Matter of Michelin Tire Corp., supra; Matter of Bardouille, supra and Matter of Izummi, supra.*

On review of the complete record, it cannot be found that the beneficiary will be employed in a primarily managerial or executive capacity. The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. The vague position description is insufficient to establish that the beneficiary's proposed job duties are managerial or executive in nature. Furthermore, the petitioner has not provided persuasive evidence to establish that the beneficiary will be managing the organization, or managing a department, subdivision, function, or component of the company, at a senior level of the organization hierarchy. The petitioner agrees with the director's decision with regard to the nature of his duties, and admits in the record that his duties, at the time the petition was submitted, were not primarily managerial or executive in nature. The record does not demonstrate that the U.S. entity contains the organizational complexity or financial backing to support the proposed managerial or executive staff position. The record does not support a finding that the petitioner will be supervising a subordinate staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties.

Furthermore, the petitioner's evidence is not sufficient in establishing that the beneficiary will be directing the management of the organization or a major component or function of the organization; establishing the goals and policies of the organization; exercising wide latitude in discretionary decision-making; and receiving only general supervision or direction from higher level executives. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title. Based upon the evidence furnished, it cannot be found that the beneficiary will be employed in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary's services are for a temporary period and that the beneficiary will be

transferred to an assignment abroad upon the completion of the temporary services in the United States pursuant to 8 C.F.R. § 214.2(1)(3)(vii). Further, the petitioner has not demonstrated that a qualifying relationship will continue to exist between the U.S. and foreign entity, and that the foreign entity will continue doing business during the alien's stay in the United States. As the appeal will be dismissed, these issues need 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; *Republic of Transkei v. INS*, 923 F.2d 175,178 (D.C. Cir. 1991 ) (holding burden is on the petitioner to provide documentation); *Ikea US, Inc. v. U.S. Dept. of Justice*, 48 F.Supp.2d 22, 24 (D.D.C. 1999) (requiring the petitioner to provide adequate documentation). The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.