

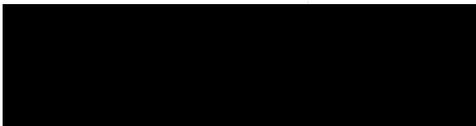
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U.S. Department of Homeland Security
Citizenship and Immigration Services

D7

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



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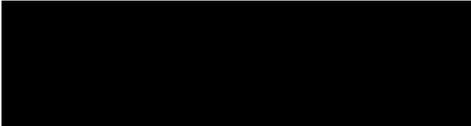
File: LIN 00 118 50956 Office: NEBRASKA SERVICE CENTER Date:

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:



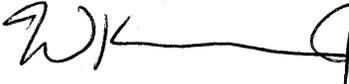
INSTRUCTIONS:

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 which 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 Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is engaged in the business of trade, investment and service management. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its Vice President. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. company and the foreign company. Additionally, the director determined that the beneficiary has not been and will not be employed in a primarily executive or managerial capacity.

On appeal, counsel asserts that the director failed to consider a substantial part of the evidence submitted by the petitioner that demonstrated the qualifying relationship between the foreign entity and the U.S. entity as well as evidencing that the beneficiary qualifies as an executive.

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 within 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 United States petitioner was incorporated in California in 1996 and in Missouri in 1999. The petitioner states it is a 100% owned subsidiary of International Agency for Development Corp. (ADIC International) Incorporated Ltd. of Freetown, Sierra Leone. On the Form I-129, the petitioner states that it has 13 employees and its gross annual income was \$456,001. The initial petition was approved and was valid from March 10, 1997 to March 10, 1998. It was extended for a two-year period and was valid until March 10, 2000. The petitioner seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of \$24,000.

The first issue in this proceeding is whether a qualifying relationship exists between the petitioning company and the claimed parent company.

CIS regulations at 8 C.F.R. § 214.2(1)(ii)(G) define the term "qualifying organization" as follows:

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.

8 C.F.R. § 214.2(1)(ii)(I) states:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

8 C.F.R. § 214.2(1)(ii)(J) states:

Branch means an operating division or office of the same organization housed in a different location.

8 C.F.R. § 214.2(1)(ii)(K) states:

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

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

Affiliate means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner claims to be the subsidiary of the foreign entity. In support of this claim, the petitioner submitted its business license for Arcadia, California; Articles of Incorporation; Stock Certificate and Stock Ledger; Notice of Transaction to Commissioner of Corporation for the State of California; and its 1997 Corporate U.S. Tax Return.

On April 18, 2000, the director issued a request for additional evidence stating that the documentation submitted was not sufficient to warrant favorable consideration. The director requested the following information:

Submit documentary evidence to establish the qualifying corporate interrelationship between the United States business entity and the foreign business entity which employs the beneficiary. Such evidence must establish common ownership and control between the foreign entity and the United States entity. Evidence of a qualifying relationship may include, but is not limited to annual reports, statements from the organization's president or corporate secretary, articles of incorporation, financial statements, and/or evidence of ownership of all outstanding stock for both entities. [sic]

The director noted that the documentation submitted contained conflicting information regarding the ownership of the U.S.

entity.

In response to the request for evidence, the petitioner re-submitted the Articles of Incorporation of the U.S. entity, the Stock Certificate and Stock Ledger which indicate that the foreign entity owns 100,000 shares of the U.S. entity. The petitioner submitted a copy of the California business license for the U.S. entity. The petitioner also re-submitted the 1997 U.S. Corporation Income Tax Return for the U.S. entity doing business as Asia Books and Video.

The director noted that the stock certificate and the stock ledger indicated that the foreign entity owns 100,000 shares of the U.S. entity. The Arcadia, California business license states that Dauph Smith is the owner of the U.S. entity. The director also noted that on schedule K of the tax return, question number four (4) asks if the company is a subsidiary in an affiliated group. The petitioner answered "no." Question five (5) refers to ownership and the petitioner had written "see statement 2." Statement 2 of schedule K asks for the names of the owners with 50 percent or more ownership, and the petitioner listed the name "Dauph Smith" as owning 100 percent of the U.S. entity.

The director stated "[d]ue to the conflicting evidence submitted, the Bureau is not convinced of the qualifying corporate relationship between [the foreign entity] and [the U.S. entity]."

On appeal, counsel explains that the U.S. entity is 100% owned by the foreign entity as evidenced by petitioner's statements and evidence submitted. Counsel also submits the application form for the Business License of the City of Arcadia, California. As counsel explains, in the Business License Application form, a block is designed for filling out the information of "Owners, Partners, or Corporate Officers."

Additionally, counsel submits the IRS Form 1120X Amended U.S. Corporation Income Tax Return for tax year ending 1997. Counsel explains "the evidence submitted with the appeal shows that it was a mistake made by the CPA, who prepared the tax return." Counsel also states "Tax return is apparently not an official document for record of ownership of a corporation, and whoever is the owner thereof does not change that status of taxpayer as a corporation."

The AAO notes that there is no evidence that this amended tax Form 1120X was filed with the Internal Revenue Service. Additionally, the petitioner did not submit any U.S. Corporate Tax Returns for 1998 or additional current documents from the foreign entity that would demonstrate foreign ownership of the U.S. entity. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the

visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The AAO accepts the explanation that the city business license may indicate an owner or an officer, however, based on the documentation in the record of proceeding, the AAO is not convinced that there is a qualifying relationship between the U.S. entity and the foreign entity. Consequently, it must be concluded that the petitioner has failed to demonstrate a qualifying relationship with a foreign entity pursuant to 8 C.F.R. § 214.2(1)(1)(ii)(G).

The second issue in this proceeding is whether the beneficiary has been and will be primarily performing managerial or executive duties.

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.

When examining the executive or managerial capacity of the beneficiary, CIS will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2 (1) (3) (ii). In this instance, the petitioner states that the beneficiary is the vice president and chief financial officer of the company.

The director stated the documentation submitted to show that the beneficiary qualifies as an L-1A Executive/Manager is not sufficient. The director requested the following:

Submit a complete detailed description of the alien's employment with the foreign entity, for one continuous year abroad within three years immediately preceding the alien's entry.

Submit a complete, detailed description of the duties performed by the beneficiary for the U.S. entity in California.

Submit a complete, detailed description of the duties to be performed by the beneficiary in Hazelwood, Missouri. If the beneficiary will be performing various duties, please indicate the percentage of time the beneficiary will spend performing each duty.

Submit evidence to establish that the beneficiary qualifies under all four criteria for either a Manager or Executive in the foreign position and her position in the United States.

The statements should include information concerning the dates of employment, job titles, specific job duties, types of employees supervised, if any, level of authority, and title and level of authority of the alien's immediate supervisor. The statement should not merely repeat the regulations cited above.

In response to the request for evidence, the petitioner provides a

description of the foreign position held by the beneficiary. The petitioner states that the beneficiary was the Import/Export Manager and was directly supervised by the Managing Director. Her responsibilities included:

Directly supervised the work of twenty-nine employees of Import/Export Department, including supervisors, import/export administrators and representatives, budget planners and other employees. She was authorized by the Managing Director of the Company in dealing with personnel matters of the department, including hiring, promoting and discharging department employees under her supervision.

Exercised discretionary authority over day-to-day operations of the Company's import/export business. Her duties included reviewing and approving selection and hiring of outside import

The petitioner stated that the beneficiary has been serving as vice president for the U.S. entity. She has been responsible for the company's management of business operations. Her duties include:

- 1) assisting the President in establishing objectives and policies of the company, including its financial goal;
- 2) formulating the company's financial policies and operational guides;
- 3) directing the preparation of budget proposals to the board of directors and supervising management and operations;
- 4) directing the preparation of financial reports to the board and deciding necessary adjustments to the operational and financial plans according to the company's performance;
- 5) deciding the organizational structures of the company, including hiring, promoting, and firing managerial and professional staff of the company
- 6) directing and supervising the work of the company's managerial and professional staff
- 7) making decisions on retaining outside professional services, such as certified public accountants and other professionals for business operations; and
- 8) coordinating the international trade operations between the [U.S. entity] and the [foreign entity].

The director determined that the petitioner has not submitted any evidence to indicate that they currently conduct any other type of business besides a Chinese buffet restaurant in Hazelwood, Missouri. The director determined that petitioner repeated the definitions as outline in the regulations. "Merely repeating the

regulations is not sufficient in demonstrating the beneficiary's managerial and executive responsibilities." The director found the evidence is not convincing in establishing that the beneficiary is employed primarily in an executive or managerial capacity.

On appeal, counsel states that the petitioner had indeed provided a detailed job description and restated the job description previously provided. The job description stated that the beneficiary's responsibilities include "deciding the organizational structures of the company, including hiring, promoting, and firing managerial and professional staff of the company; and directing and supervising the work of the company's managerial and professional staff." However, the record of proceeding does not provide any evidence that there is a professional staff. The only proof of business conducted is that of a restaurant. The organizational chart of the U.S. entity does not demonstrate that there is a professional staff to be supervised as stated in the job duties.

The description of the duties employed words such as "establishing objectives and policies of the company, including its financial goal," "formulating the company's financial policies and operational guides," and "involved in giving input and advice as well as executing decisions made." These words and phrases are generalities. For example, they do not identify what "financial policies" and "operational guides" the beneficiary will establish. In sum, the petitioner described the beneficiary's duties in general terms, largely paraphrasing the statutory and regulatory executive and managerial requirements. Going on record without supporting documentary evidence is insufficient to meet the burden of proof in these proceedings. *Ikea US, Inc. v. INS*, 48 F.Supp. 2d 22, 24-5 (D.D.C. 1999); see generally *Republic of Transkei v. INS*, 923 F.2d 175 (D.C. Cir. 1991) (discussing burden the petitioner must meet to demonstrate that the beneficiary qualifies as primarily managerial or executive); *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel's assertions are not persuasive. The petitioner has not submitted a sufficiently detailed description of the beneficiary's current and proposed job duties and day-to-day activities to establish whether the position is executive. The petitioner has submitted general statements which vaguely describe the beneficiary as performing executive duties. Half of the duties described state that the beneficiary manages a professional staff when there is no evidence that the petitioner employs a professional staff. Furthermore, the petitioner has not demonstrated that the beneficiary directs the management of the organization or a major component or function of the organization.

On review, the record as presently constituted is not persuasive in

demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner is a company that is involved in trade, investment and service management. The record shows that the petitioner owns a Chinese buffet restaurant. The record does not establish that a majority of the beneficiary's duties have been or will be directing the management of the organization. For this reason, the petition may not be approved.

While not directly addressed by the director, the minimal documentation of the foreign entity's current business operations raises the issue of whether the foreign entity is a qualifying organization doing business in at least one other country pursuant to 8 C.F.R. § 214.2(1)(1)(ii)(G)(2) in that it is engaged in the regular, systematic, and continuous provision of goods or services by a qualifying organization and does not represent the mere presence of an agent or office in the United States. Again, as the appeal will be dismissed, this issue 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.