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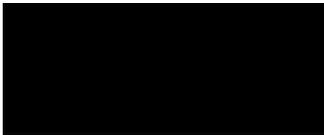
U.S. Department of Homeland Security

Citizenship and Immigration Services

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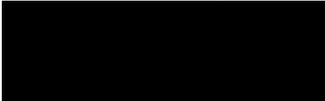
ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street N.W.  
Washington, DC 20536



File: EAC 02 109 52524 Office: VERMONT SERVICE CENTER Date:

OCT 28 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, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an automobile parts company that seeks to employ the beneficiary temporarily in the United States as a vice president and general manager for a period of one year. The director determined that the petitioner had not secured adequate premises in which to conduct business. The director also determined that the petitioner had not established that the beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, counsel submits a letter from the petitioner indicating that the company's utility bills such as electricity, water and trash removal are included in the rent of its leased premises. Counsel also forwards photographs to show that the company has adequate space to conduct business and an amended business plan to support assertions that it has made for the record.

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 regulations at 8 C.F.R. § 214.2(1)(3) state 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.

The petitioner, a New York corporation, was established on December 19, 2001. The petition was filed on February 11, 2002. The petitioner requests an L-1A nonimmigrant visa for the beneficiary so he may supervise and control the operations of the new office in New York.

The United States entity qualifies under the new office definition at 8 C.F.R. § 214.2(1)(1)(ii) that states as follows:

(F) New office means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

Regulations at 8 C.F.R. § 214.2(1)(3)(v) state that if a petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The first issue to be addressed in this proceeding is whether the petitioner has provided evidence to demonstrate that sufficient physical premises were secured to house the new office.

The petition was filed on February 11, 2002. To establish that it has obtained the required physical premises, the petitioner submitted a copy of a lease dated February 28, 2002 for premises at 109-08 Van Wyck Expressway, South Ozone Park in the County of Queens in the State of New York. This evidence cannot be considered for purposes of this petition. A petitioner must establish eligibility at the time of filing; See 8 C.F.R. § 103.2(b)(12); *Matter of Izummi*, 22 I&N Dec. 169 (AAO 1998). The director's determination that the petitioner had not secured

adequate premises in which to conduct business at the time of filing is affirmed.

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. § 101(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.

The petitioner's Corporate Secretary, in a letter dated May 24, 2001, describes the beneficiary's proposed job duties in the United States as follows:

Mr. [REDACTED] role as Vice President manager will be supervising and controlling the USA operations of our company at our New York office. He will evolve new strategies and programs to expand our Auto business and thus to contribute to the expansion of our business in the United States. He will work closely with the company's senior management in the development and growth of these deals in the US marketplace. He will evaluate and review the current trade deals.

His proposed duties in the U.S. will include:

- 1) Supervising a team of project managers and technical support and service managers who provide technical support to import/export projects and Auto Parts operations.
- 2) Completely handling the responsibilities of all the operations in the United States which include the following:
  - a) Supervising a team of top management personnel who run the day-to-day operations at Corp. in the United States.
  - b) Providing key strategic technology and project management directives to stay ahead in the United States.
  - c) Manage finance operations, Personnel and Human Resources development Policies.
  - d) Set guidelines for quality management, technical support management, and attend Trade shows.
- 3) Report back to the parent company in Pakistan.
- 4) Identify potential trading deals.

The petitioner explains that the company intends to hire ten additional employees for the United States corporation within one year and specifies the job titles for nine of these positions.

The description of the beneficiary's job duties is insufficient to warrant a finding that the beneficiary will be employed in a managerial or executive capacity. It appears, at most, the

beneficiary will be performing operational rather than managerial duties. The petitioner has provided insufficient evidence to establish that the beneficiary will be managing or directing the management of a function, department, subdivision or component of the U.S. company.

Based upon the record, even considering the petitioner's plan to hire ten additional employees, the petitioner has not provided evidence that the beneficiary will be managing a subordinate staff of professional, managerial or supervisory personnel who relieve him from performing non-qualifying duties. It appears that the beneficiary is the individual performing the necessary tasks for the ongoing operation of the company, rather than primarily directing or managing those functions through the work of others. Consequently, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity. For this additional reason, 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.