

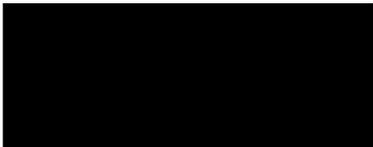
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Department of Homeland Security
Citizenship and Immigration Services

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



SEP 12 2003

File: WAC-01-192-54155 Office: California 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 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 the 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, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a manufacturer and distributor of heating and cooling technology and products. It seeks authorization to employ the beneficiary temporarily in the United States as its executive manager. The director determined that the petitioning entity was a representative of an Iranian business and therefore inadmissible as an L-1.

On appeal, counsel argues, in pertinent part, that:

[The petitioner] is a separate and distinct California corporation which happens to be an affiliate of the Iranian corporation. Neither [the petitioner] nor its employees are, or will be, agents, employees, or contractors of an Iranian business.

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 [emphasis added] in a capacity that is managerial, executive, or involves specialized knowledge.

31 C.F.R. § 560.505(c) states the following pertaining to Iranians who apply for visas under section 101(a)(15)(L) of the Immigration and Nationality Act:

Persons otherwise qualified for a visa under...L (intra-company transferee) and all immigrant visa categories are authorized to carry out in the United States those activities for which such visa has been granted by the U.S. State Department, provided that the persons are not coming to the United States to work as an agent, employee or contractor of the Government of Iran or a business entity or other organization in Iran.

The U.S. petitioner states that it was established in 2000 and that it is a 55% owned subsidiary of [REDACTED] located in Tehran, Iran. The petitioner seeks authorization to employ the beneficiary for a period of seven years at an annual salary of \$30,000.

At issue in this proceeding is whether the beneficiary will be employed as an agent, employee or contractor of the Government of Iran or a business entity or organization in Iran and is therefore inadmissible under section 31 C.F.R. § 560.505(c) of the Act.

The Form I-129 Petition for Nonimmigrant Worker and a "Shareholder Representation Letter", dated October 14, 2000, both contained in the record, reveal that the United States petitioner, Uniacro, Inc. is a 55% owned subsidiary of the foreign entity (parent organization), [REDACTED]. The record provides evidence that [REDACTED] is 100% owned by Iranian nationals. The petitioner is applying for permission for the beneficiary to enter the United States as an L-1 nonimmigrant, "intra-company" transferee.

Counsel's argument on appeal that "neither [the petitioner] nor its employees are, or will be, agents, employees, or contractors of an Iranian business," directly contradicts the employment conditions stated at the time of the filing of the petition and is not persuasive in overcoming the director's objections. The parent company, Iran Radiator, has a controlling interest in the U.S. company. It is therefore concluded that the beneficiary is a representative of an Iranian business. For this reason, the petition may not be approved.

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary has been employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act. In addition, there is no evidence to establish that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad on completion of the temporary assignment in the United States pursuant to 8 C.F.R. § 214.2(1)(3)(vii). As the appeal will be dismissed on the grounds discussed, 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.