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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 02 148 51121 Office: TEXAS SERVICE CENTER Date: APR 01 2004

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner [redacted] L.L.C., states that it is an affiliate of an Indian company [redacted] The petitioner manufactures, exports, and imports textiles and accessories; imports and exports gold and diamond jewelry; and exports computer parts and peripherals. The U.S. entity was incorporated in the State of Louisiana on March 2, 2000. In June 2001, the U.S. entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), as an executive or manager. CIS approved the petition as valid from May 30, 2001 until May 30, 2002. The petitioner now endeavors to extend the petition's validity and the beneficiary's stay for three years. The petitioner seeks to employ the beneficiary's services as the U.S. entity's operations manager at an annual salary of $28,600.

On November 13, 2002, the director determined that the beneficiary did not qualify as a manager; consequently, the director denied the petition.

On appeal, counsel asserts that the beneficiary's proposed duties are primarily managerial.

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 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.

In relevant part, the regulations at 8 C.F.R. § 214.2(l)(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 (l)(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.

In this matter, the petitioner asserts that the beneficiary will only perform managerial 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.

When examining the 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(l)(3)(ii). Initially, the Form I-129 described the beneficiary's proposed duties as "act as liaison between U.S. and Indian Offices, maintain customer relations, communicate with Indian counterpart on U.S. requirements; asure [*sic*] U.S. buyers with quality products; generate new business and understand buyer's [*sic*] needs, prepare quotes and supply samples to companies requiring bids and samples."

The petitioner submitted April 8, 2002 and April 11, 2002 letters in support of the Form I-129. The letters described the beneficiary's current and proposed U.S. duties. The current duties include:

- Directing the day to day affairs of the company, *i.e.* imports and exports of fabric and garments, maintaining customer relations, and increasing business with present customers.
- Generating new business in computer printer cartridges and inks.
- Generating new business with Milliken Carpets for supply of high quality carpets, floor panels and understructures.
- Acquiring for the foreign company a 100 percent stake in a convenience store, Tigerland Market, in Baton Rouge, Louisiana, for $125,000.
- Completing the initial footwork for the marketing of gold jewelry (chains and pendants) and silver medallions. The petitioner has been successfully marketing them.
- Overseeing and directing all company functions in the United States including: acting as a liaison between the U.S. and Indian offices; maintaining customer relations, communicating with the Indian counterpart on U.S. requirements; assuring the quality of products sold to United States buyers; generating new business; and preparing quotations and supplying samples to companies that have requested bids.

(Bullets added.) The April 8, 2002 letter enumerated the beneficiary's proposed duties as:

a. Continue to maintain good understanding with the already established customers and generate more business with them. Follow up with Extra Sportswear for their orders. Increase sales by generating new customers.

b. Continue to identify good suppliers for various computer parts and accessories. Increase business with Budde International I[nc].

c. Continue to increase business in [g]old jewelry and silver medallions. Appoint agents to market them in different states.

d. Manage the operations of Tigerland Market and continue to identify and invest in stores that come up for sale.

e. Continue and expand business with Milliken Carpets.

The director determined that the above descriptions were inadequate to establish that the beneficiary would be performing primarily managerial duties. As a result, on October 2, 2002, the director issued a request for evidence. The director asked the petitioner to "explain how the beneficiary can be considered a bona fide manager when he is the sole employee of the petitioner. **BE SPECIFIC.**" (Emphasis in original.)

In response to the request for evidence, counsel submitted an October 28, 2002 letter stating that in April 2002 the U.S. entity hired one additional employee, [redacted] Neither the letter nor the exhibits attached to the letter describe [redacted] duties. Additionally, in response to the request for evidence counsel resubmitted copies of the April 8 and 11, 2002 letters. Counsel's October 28 letter stated that the beneficiary qualifies as a manager because he: (1) "has overseen and directed all company functions in the United States"; (2) "manages the day-to-day affairs of the company"; and (3) "manages an essential function of the organization." The assertions of counsel do not, however, constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980).

The duties listed above are too broad and nonspecific to convey an understanding of the beneficiary's daily activities. For example, the job descriptions depict the beneficiary as:

- directing the company's daily affairs;
- generating new business;
- marketing jewelry;
- acting as a liaison between the U.S. and Indian entities;
- assuring the quality of products;
- preparing quotations;
- supplying samples;
- maintaining a "good understanding" with customers;
- identifying suppliers; and
- managing the operations of Tigerland Market.

The petitioner did not define directing daily affairs, generating new business, acting as a liaison, assuring the quality of products or maintaining a "good understanding" with customers. Similarly, the petitioner did not quantify the new business generated, quotations prepared, samples supplied, or suppliers identified. The AAO further notes that counsel failed to explain what bearing the beneficiary's duties at a separate business, Tigerland Market, have on the beneficiary's responsibilities for the petitioner. Going on record without supporting documentary evidence is insufficient for the purpose of meeting 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). Additionally, specifics are an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava,* 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd,* 905 F.2d 41 (2d. Cir. 1990).

The job duties discussed above suggest that marketing comprises a substantial portion of the beneficiary's responsibilities. For example, the beneficiary will generate new business for computer printer cartridges and inks, generate new business with Milliken Carpets, market gold jewelry and silver medallions, and identify computer parts and accessories suppliers. Marketing duties, by definition, qualify as performing tasks necessary to provide a service or produce a product. Additionally, the beneficiary's remaining duties entail performing tasks necessary to provide a service or product. As an illustration, the beneficiary will maintain good customer relations and perform quality assurance functions.

An employee who primarily performs the tasks necessary to produce a product or provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International,* 19 I&N Dec. 593, 604 (Comm. 1988). In sum, the beneficiary's vaguely defined responsibilities and production-oriented activities preclude CIS from classifying the beneficiary as an executive.

Counsel asserts that the beneficiary further qualifies as a manager because, as of April 2002, he began supervising [redacted] The U.S. entity must, however, demonstrate that the beneficiary will primarily supervise a subordinate staff of professional, managerial, or supervisory personnel who can relieve him from performing his nonqualifying duties. *See* section 101(a)(44)(A)(ii) of the Act. In this instance, the petitioner did not describe [redacted] duties; therefore, CIS cannot determine whether the employee will be able to relieve the beneficiary from performing nonqualifying duties.

Finally, counsel claims that the beneficiary is a manager because he manages an essential function of the organization. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but, instead, is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. The AAO recognizes that an entity's size does not necessarily decide the question of managerial or executive capacity.

The petitioner not only insufficiently detailed the beneficiary's proposed managerial duties, but failed to identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. Thus, the petitioner has provided inadequate documentation that the beneficiary will manage an essential function.

In sum, the beneficiary's marketing and production-oriented duties, vaguely defined responsibilities, and apparent lack of professional, managerial, or supervisory personnel preclude CIS from classifying the beneficiary as a manager.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.