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**U.S. Citizenship
and Immigration
Services**



FILE: SRC 02 145 51191 Office: TEXAS SERVICE CENTER Date: **APR 01 2004**

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 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] Inc., avers that it is a subsidiary of a Pakistani company [REDACTED].¹ The petitioner plans to import and sell oriental rugs and antique copper. The U.S. entity was incorporated in the State of Texas on September 6, 2001. The petitioner now seeks to hire the beneficiary as a new employee to open its U.S. office. Consequently, in April 2002, the U.S. entity petitioned to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) for three years. The petitioner seeks to employ the beneficiary's services as the U.S. entity's president and chief executive officer at an annual salary of \$35,000.

The director determined that, during the three years prior to the beneficiary's application for admission into the United States, the beneficiary did not work in a qualifying managerial or executive capacity for one continuous year. Consequently, on August 21, 2003, the director denied the petition.

On appeal, the petitioner states that the beneficiary's duties for the overseas company were primarily managerial and 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 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.

Under 8 C.F.R. § 214.2(l)(3), 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.
- (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

¹ The U.S. entity is actually an affiliate of the Pakistani operation. See 8 C.F.R. § 214.2(l)(1)(ii)(L)(2). Specifically, the U.S. and foreign entities are owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. The U.S. corporation has four shareholders, each of whom hold 250 shares. The same four shareholders each own a 25 percent interest in the Pakistani company.

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.

Pursuant to 8 C.F.R. § 214.2(l)(3)(v), if the 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 of 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 paragraph (l)(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.

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, the AAO looks first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Moreover, a petitioner cannot claim that some of the duties of the proffered position entail executive responsibilities, while other duties are managerial. A petitioner must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are *either* in an executive *or* managerial capacity. *Id.* Additionally, during the first year of operation, a beneficiary may perform some duties which are not normally managerial or executive. *See* 8 C.F.R. §§ 214.2(l)(3)(v)(C)(1), (2), and (3). However, the petitioner must demonstrate that the U.S. office will support the beneficiary's managerial or executive position within one year of the petition's approval.

An April 2, 2002 letter attached to Form I-129 stated: "[The beneficiary's] most recent position within [the foreign company], was partner, acting as a 25% shareholder Since 1980, [the beneficiary has] worked with [the foreign company] handling exports of oriental rugs and handicrafts to various countries including the USA." The director determined that the above description was inadequate to establish that the beneficiary performed primarily managerial or executive duties for the overseas operation. Consequently, on June 18, 2002, the director issued a request for evidence. In particular, the director asked the petitioner to "[d]escribe the duties of the beneficiary with the foreign entity. The [April 2, 2002] support letter says only that he 'worked with [redacted] handling exports . . . [.]'" (Emphasis in original.)

In response to the request for evidence, the petitioner submitted an August 31, 2002, organizational chart:

1. Mrs [redacted]
2. Mr [redacted] Wyne General Manager responsible for overall matters of the company.

3. [The beneficiary,] Purchase [and] Marketing Manager in Pakistan. At present[,] he is in America to oversee the responsibility of [b]usiness prospects and opening of the [b]ranch [o]ffice.
4. Mr. [REDACTED] Assistant Purchase [and] Marketing Manager in Pakistan. In the [beneficiary's] absence . . . , he is also looking after his responsibilities in the country.
5. Mr. [REDACTED],] Officer, Finance [and] Account.
6. Mr. [REDACTED] [,] Office Assistant.
7. Mr. [REDACTED] [,] Office [A]ssistant/Clerk.

Additionally, the petitioner provided an undated document entitled, "To whom it may concern." The document depicted the beneficiary's duties in Pakistan:

[The beneficiary has been] visiting [the United States] for the last 15 years and he has developed good business relations with his associates and clients all over [the] USA. [The beneficiary] has complete know-how in marketing carpets and he has all [a]round experience as a travelling [*sic*] salesman, participant in exhibitions and auction of carpets, import and export trade. He has thus acquired expertise in this trade and more particularly he has become familiar with rules and regulations of customs and other [government] agencies of [the] USA.

Finally, in response to the request for evidence, the petitioner provided a resume. The resume summarized the beneficiary's claimed responsibilities for the period 1980 through September 2001 as:

Partner/Manager:

- Day-to-day discretionary authority in coordinating the activities of the company.
- Responsible for the fiscal accounting of all aspects of the operation.
- Responsible for development of business relations with US clients.
- Participate in exhibitions and auctions of carpets.
- Sales, import and export of carpets and merchandise.

The claimed duties are too broad and nonspecific to convey an understanding of the beneficiary's duties in Pakistan. The resume and document entitled "to whom it may concern," for example, depict the beneficiary as coordinating activities, being responsible for fiscal accounting, developing business relations, participating in exhibitions and auctions, as well as selling, importing, and exporting carpets and merchandise. The petitioner does not define or quantify these terms. 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, supra* (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). Furthermore, 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 organizational chart also fails to clarify the beneficiary's overseas responsibilities. The chart lists seven employees' names, job titles for six of the employees, and single sentence job duty descriptions for three of the employees. These very limited descriptions preclude CIS from determining whether the beneficiary supervises a subordinate staff of professional, managerial, or supervisory personnel who can relieve him from performing nonqualifying duties. *See* section 101(a)(44)(A)(ii) of the Act.

Finally, the job duties depicted above suggest that the beneficiary devotes a sizable portion of his time to marketing. For instance, he serves as a traveling salesman, participates in exhibitions and auctions, and develops business relations with U.S. clients. Marketing duties, by definition, qualify as performing tasks necessary to provide a service or produce a product. Moreover, the beneficiary performs tasks necessary to produce a product or provide a service. He, for example, is responsible for the foreign entity's fiscal accounting. 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, marketing and production-oriented duties, and lack of verifiable subordinate professional, managerial, or supervisory personnel preclude CIS from classifying the beneficiary as an executive or manager at the overseas company.

Beyond the decision of the director, the AAO notes that the proposed duties are too broad and nonspecific to convey an understanding of the beneficiary's duties during the first year of operation. Furthermore, the lack of specificity prevents the petitioner from demonstrating that it will be able to support a manager or executive after the first year of operation. The April 2, 2002 letter attached to Form I-129 stated: "[The beneficiary] will be responsible for all aspects of the operation. As a start-up company, [the beneficiary] will supervise all work products, set standards for the work and general guidelines for each assignment which must be followed and executed by the team, and coordinate the various aspects of the process." The resume depicts the proposed duties as:

President/Manager:

- Day-to-day discretionary authority in coordinating the activities of the company.
- Responsible for the fiscal accounting of all aspects of the operation.
- Hire and train part time commission based sales staff.
- Coordinate and schedule staff for auctions.
- Set standards for marketing and sales techniques.
- Maintain rules and regulations of US customs, importing and exporting particulars.

The letter and resume fail to define or quantify words and phrases such as, "work products," "standards," "coordinate," "fiscal accounting," and "rules and regulations." Also, the resume and letter do not pinpoint who will serve on the "sales staff" or "the team." Similarly, the business plan presents no details about the projected duties of the two future staff members whom the beneficiary may supervise. As noted earlier, 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, supra*; *Republic of Transkei v. INS, supra*; *Matter of Treasure Craft of California, supra*. The petitioner has not established that the beneficiary will serve as a manager or executive during or after the first year of operation.

Also, beyond the decision of the director, the AAO observes that the employment dates and locations on the Form I-129 and resume present inconsistent information. The Form I-129 states that the beneficiary entered the United States on February 14, 2002 as a B-1 nonimmigrant visitor. See Section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(B); 8 C.F.R. § 214.2(b). In contrast, the resume claims that the beneficiary began working in Texas in September 2001 for the foreign employer.² Consequently, it is unclear from the evidence when the beneficiary entered the United States to begin working. The petitioner must provide independent objective evidence to resolve any inconsistencies in the record. Failure to provide such proof may cast doubt on the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-2 (BIA 1988).

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.

² Moreover, if taken at face value, the resume would indicate that the beneficiary has been earning income in the United States in violation of his B-1 visitor status. *Matter of Lawrence*, 15 I&N 418, 420 (BIA 1975) (holding that the term "temporary" does not contemplate a potentially limitless visit to U.S.).