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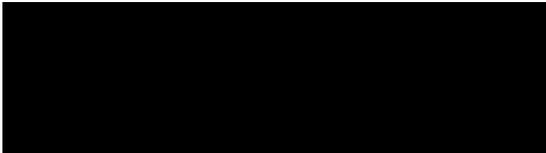
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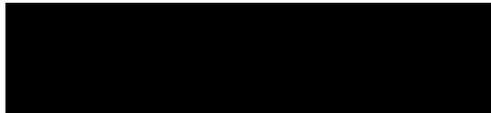
**U.S. Citizenship
and Immigration
Services**



FILE: WAC 02 093 51149 Office: CALIFORNIA SERVICE CENTER

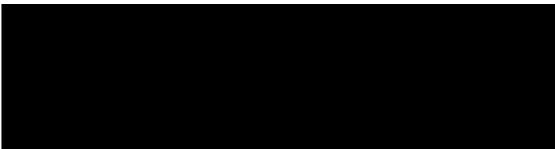
Date: **APR 01 2004**

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
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 described as a real estate and business investment business. It seeks to employ the beneficiary temporarily in the United States as general manager and chief executive officer (CEO) of its new office for one year. The director determined that the evidence was not sufficient to establish that the beneficiary has been employed primarily in a qualifying managerial or executive capacity.

On appeal, the petitioner disagrees with the director's determination and asserts that the beneficiary's duties have been managerial or executive in nature.

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(l)(1)(ii) states, in part:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(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 (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 with 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 serves in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(1)(3)(v) states that 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 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 (I)(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.

According to the documentary evidence contained in the record, the petitioner was incorporated in 2000 as a real estate and business investment business. The petitioner states that the U.S. entity is a subsidiary of Al-Abraj Gen. Trad. & Cont. Est, located in Kuwait. The petitioner declares one employee. The petitioner seeks the beneficiary's services in order to open a new office and render services as general manager and CEO for a period of one year, at a weekly salary of \$1,500.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been employed in a primarily managerial or executive capacity by 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.

In the petition, the petitioner stated that the beneficiary's duties for the past three years consisted of directing the operation of the company; formulating policies, and negotiating contracts to exclusively represent and promote products of foreign companies in Kuwait.

In a letter of support dated January 10, 2001, counsel for the petitioner stated that the beneficiary had been employed by the foreign entity in the capacity of general manager since 1996, without interruptions. Counsel also stated that the beneficiary prepared a business plan for the U.S. entity in line with and following the general policies of the foreign company.

The record also contains a copy of the beneficiary's work permit, which shows that he was issued a permit to work for the foreign entity as a manager on November 27, 2000, with an employment term of three years.

The record contains an organizational chart of the foreign entity that depicts six positions within the company hierarchy. The chart shows the owner at the top of the hierarchy, with the beneficiary as board member and general manager, a sales manager, and a programmer, sales representative, and secretary as subordinates to the beneficiary.

The director determined that the evidence submitted was insufficient to determine whether the beneficiary had served in a managerial or executive capacity while employed by the foreign entity, and subsequently requested that the petitioner submit copies of the foreign company's payroll records that pertain to the beneficiary's employment; the total number of employees at the foreign location; an organizational chart of the foreign entity; and a more detailed description of the beneficiary's duties abroad.

In response to the director's request for additional evidence, counsel for the petitioner stated that the foreign entity has not implemented a payroll system similar to that found in the United States. He continued by stating that Kuwaiti or foreign nationals are exempt from paying income taxes. Counsel stated that the beneficiary has provided a copy of his work permit as evidence of his employment with the foreign entity. Counsel also asserted that the total number of employees at the foreign company where the beneficiary is employed is six.

In response to the director's request for additional evidence, counsel also listed the beneficiary's duties abroad as:

- Oversee general administration affairs of the foreign company (Approx. 15-20%),
- Oversee activities related to the entity such as acting as liaison and representative for other companies in Kuwait (Approx. 5-10%),
- Direct and engage in long-range planning and identifying business opportunities in the international markets (Approx. 15-20%), and
- Direct the business activities of the company in accordance with company guidelines and goals (Approx. 40-50%)
- The beneficiary is further responsible for overseeing all activities of the foreign entity to achieve maximum sales, profits and customer satisfaction by building a sales team to provide a clear vision and focus, providing solid and aggressive market penetration strategies, introducing strong sales processes and building a full pipeline of qualified sales prospects, motivating the sales team, resolving conflicts, removing barriers, and providing positive recognition and feedback. Beneficiary's duties include supervising development, implementation and evaluation of performance objectives and measures focusing on overall customer satisfaction, attracting, recruiting and hiring quality sales professionals, researching marketplace and developing a winning strategy to achieve market growth at 20% revenue growth, quarter over quarter (Approx. 25%).

The director determined that the record did not establish that the beneficiary had been or would be employed in a primarily managerial or executive capacity. The director further stated that the beneficiary, rather than primarily directing the management of the organization, appears to have been performing many aspects of the day-to-day operations of the business. The director stated that some of the described duties have not been

demonstrated to be managerial or executive responsibilities. The director continued by stating that unsupported statements made by the beneficiary and submitted as evidence by the petitioner, were insufficient in establishing that the beneficiary has been managing an adequate subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing nonqualifying duties.

On appeal, counsel disagrees with the director's decision and states that: the beneficiary directs the management of the organization and controls the work of other employees; he has demonstrated that he establishes the goals and policies of the organization; and he possesses wide latitude in discretion. Counsel reiterates the beneficiary's job duties listed in response to the director's request for additional evidence as proof of the beneficiary's performance in the foreign entity. Counsel also contends that the detailed description of the beneficiary's duties contained in the record demonstrate his authority over the policy of the organization, including but not limited to recruiting and hiring quality sales professionals. Counsel further asserts that the beneficiary's duties are primarily managerial or executive in nature given his policy and decision making empowerment regarding the interests of the petitioner.

On review of the record, it cannot be found that the beneficiary has been employed in a primarily managerial or executive capacity by the foreign entity. The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. The description of the beneficiary's duties abroad are without any context in which to reach a determination as to whether they are qualifying as managerial or executive in nature. Duties described as: direct the business activities of the company; oversee general administration affairs of the foreign company; oversee activities related to the foreign company; direct and engage in long-range planning; formulating policy; and negotiating contracts are vague and lack specificity. Furthermore, the petitioner has not provided persuasive evidence to establish that the beneficiary has been managing the organization, or managing a department, subdivision, function, or component of the company, at a senior level of the organizational hierarchy. Based upon the descriptions given of the beneficiary's job duties, it appears that he has, at best, been responsible for supervising non-professional subordinates and carrying out the day-to-day services of the organization. The record demonstrates that a programmer, a sales representative, and a secretary are subordinate to the beneficiary. The petitioner has failed to provide evidence detailing the positions of the subordinates. No information regarding the educational levels of these employees has been provided. Nor has the petitioner provided documentary evidence to show how the beneficiary's daily activities interrelate to that of the other employees. The record does not support a finding that the beneficiary has been supervising a subordinate staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties.

The petitioner's evidence is not sufficient in establishing that the beneficiary has been primarily engaged in directing the management of the organization or a major component or function of the organization; establishing the goals and policies of the organization; exercising wide latitude in discretionary decision-making; or receiving only general supervision or direction from higher level executives. In response to the director's request for payroll evidence, counsel asserted that the foreign entity pays its employees in cash and that the employees are not required to report their income because there is no payroll tax imposed on them. Counsel further stated that the copy of the beneficiary's work permit submitted is sufficient evidence to establish that he has been employed by the foreign entity in an executive capacity. As evidence in support of this contention, the petitioner submitted a letter dated February 13, 2002 from the company accountant located in Kuwait, and a statement made by the owner of the foreign entity and dated that same day. Contrary to counsel's contentions, the petitioner has failed to establish the unavailability of payroll records requested by the director. Evidence of record establishes that professional accountant services have been

utilized by the foreign entity, and that it has maintained company balance sheets and income statements dating back to 1995. The lack of tax requirements in Kuwait does not relieve the foreign entity from providing copies of their internal cash payroll records.

The work permit does not show the period in which the beneficiary was employed by the foreign entity neither does it show that the beneficiary served in a managerial or executive capacity. The permit does not verify salary, actual capacity of the beneficiary, or the actual duration of his employment.

Counsel also asserts on appeal that the beneficiary's duties are executive in nature. He goes on to explain that the beneficiary establishes and implements the company's business plans, directs the management of the organization, controls the work of other employees, is responsible for overseeing the general administration affairs of the foreign entity, establishes goals and policies; and possesses wide latitude in discretion. The description of the beneficiary's job duties essentially paraphrases the essential elements of the statutory and regulatory definitions of executive. In the instant case, paraphrasing the regulation, as a substitute for a day-to-day description of the beneficiary's job duties, is insufficient to demonstrate the beneficiary is acting in an executive capacity. Specifics are clearly 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. Col, Ltd. V. Sava*, 724 F.Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Although the petitioner submitted a description of the beneficiary's job duties, it does not entail a detailed description sufficient to determine how his daily activities are, in fact, executive in nature. The petitioner has not shown that the beneficiary has been functioning at a senior level within an organizational hierarchy other than in position title. Based upon the evidence furnished, it cannot be found that the beneficiary has been employed by the foreign entity in a primarily executive capacity.

In review of the entire record, the petitioner has failed to submit evidence to show that the beneficiary has been employed by the foreign entity in a managerial or executive capacity.

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.