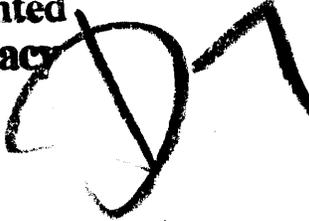


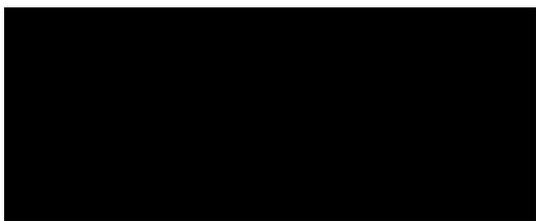
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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: WAC 02 125 53079 Office: CALIFORNIA SERVICE CENTER

Date: APR 05 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 nonimmigrant visa petition was denied by the Director, California Service Center, and the petitioner subsequently filed motions to reconsider or reopen the case. The director granted the motions and the petition was denied. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, State Bank of India, endeavors to classify the beneficiary as a nonimmigrant manager pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a subsidiary of State Bank of India and is engaged in domestic and international banking and finance. It seeks to extend the petition's validity and the beneficiary's stay for two years as the U.S. entity's manager. The petitioner was incorporated in the State of California in September 1982.

On September 13, 2002, the director denied the petition and determined that the petitioner had not established that the beneficiary will be employed in a primarily managerial or executive capacity. The petitioner subsequently filed a motion to reconsider the decision. On reconsideration, the director again concluded that the petitioner had not established that the beneficiary will be employed primarily as a manager or executive.

The petitioner then appealed the decision of the director. On appeal, the petitioner's counsel asserts that the beneficiary is employed in a managerial capacity.¹

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.

Moreover, 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.

¹ The AAO notes that on appeal, the petitioner references the beneficiary's "managerial/executive abilities." However, counsel's brief only addresses the question whether the beneficiary is primarily a manager. Therefore, this decision will only address the issue of whether the beneficiary is primarily a manager.

As noted earlier, the issue in this proceeding is whether the beneficiary will be primarily performing managerial duties for the United States 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.

On the Form I-129, the petitioner described the beneficiary’s proposed U.S. job duties as:

- Manager (Credit & [and Foreign Exchange]) at petitioner’s San Jose Branch, California branch
- Assist branch’s vice president in directing and coordinating banking activities of the petitioner’s professional staff and other banking officers in regard to the operations at the branch
- Assist vice president and branch manager in establishing and implementing the methods and procedures for carrying out various policies and practices related to the issuance of credit and letters of credit to business clients
- Exercise discretion over daily operations of the credit department

The job description above is limited and nonspecific; therefore, on April 2, 2002, the director issued a request for evidence. In particular, the director requested that the petitioner submit evidence of the number of employees at the U.S. entity’s location, a U.S. business organizational chart, a more detailed description of the beneficiary’s U.S. duties, and a copy of the company’s quarterly wage reports for all employees.

In response, the petitioner submitted job descriptions for the 11 employees in San Jose. Additionally, the petitioner submitted an organizational chart indicating that the beneficiary directs five of the 11 employees in the San Jose office. The five employees include a head teller, a teller, and three secretaries.

In addition, the petitioner submitted a detailed description of the beneficiary's U.S. duties including the percentage of time spent executing each responsibility and a copy of the quarterly wage reports. The detailed description of the beneficiary's U.S. duties include:

Management of the NRI (Non Resident Indian) Services (25 percent)

- Managing the set up of various types of NRI accounts, including overseeing the completion of relevant account forms/formalities, scrutiny of passports and visas, and obtaining of copies thereof;
- Ensuring the observance of all of the relevant policies of the bank, and of all local and federal regulations such as EDD (Enhanced Due Diligence), AML (Anti Money Laundering) and OFAC (Organization for Foreign Assets Control) measures;
- Liaison for all correspondence/letters/complaints received from Non Resident Indians
- Liaison with the Home Office in the matter of NRI services; and
- Management of all arriving remittances/ payments from NRI customers, observing bank policies, and all local and federal regulations.

Management of the Remittances from Business/Foreign Exchange Service (50 percent)

- Management of all remittances business by way of Demand Draft, and wires in both US Dollars and Indian Rupees;
- Ensure all policies and regulations set forth by the Bank are observed in conducting remittances business;
- Management of the [Foreign Exchange] Statements and reconciliation of Foreign Exchange accounts maintained in US Dollars and Indian Rupees, and
- Aiding the Assistant Vice President in preparing proper cover operations in foreign exchange to ensure that the Bank's policies in this regard are fastidiously observed.

Custodian of Cash, Security Forms and Other Valuable Assets. (10 percent)

- Managing Tellers in their functions as related to cash; and
- Ensuring that the Bank's policies and procedures are adhered to as they relate to the proper accounting, retention and safe keeping of cash and other valuables..

Security/Protection Function (5 percent)

[The beneficiary] is also the designated security officer of the Branch and is directly responsible for ensuring the observance of security and protection functions set forth by the Bank of as per local regulations.

Member of Branch Management Team (10 percent)

[The beneficiary] is a senior member of the Branch Administration Team. As such, he assists the Vice President and Branch Manager in the establishment and implementation of the methods and procedures for carrying out various policies and practices as they relate to NRI business, Remittances business, and [Foreign Exchange] business. He is also a member of the Branch Management Committee and Branch Compliance Committee

On September 30, 2002, the director denied the petition and determined that the petitioner had not established that the beneficiary will be performing duties in a primarily managerial or executive capacity. The director found that the beneficiary is actually a first-line supervisor to non-professional and non-managerial personnel.

The petitioner subsequently filed a motion to reconsider the decision. The petitioner's counsel submitted a lengthy statement again asserting that the beneficiary has served as the branch manager. Counsel also stated that each of the departments that the beneficiary manages is responsible for a major function provided by the petitioner for its customers. Counsel essentially claimed that the secretaries and bank tellers are professionals and cited unpublished decisions.

On January 21, 2003, the director granted the motion to reconsider the decision and concluded that the beneficiary will not be primarily acting in a managerial or executive capacity. The director found, "Since the beneficiary does not have other executives, managers, or professionals under his direction it appears that he is performing primarily as a first-line supervisor of non-professional clerical staff." The director noted that the new organizational chart was more complex than the original organizational chart. Specifically, the original organizational chart indicated that the beneficiary had two tellers and three secretaries under his authority. However, the new edition of the chart indicated that the assistant vice president and assistant manager, previously under the direction of the vice president/manager, now appeared to be under the direction of both the beneficiary and vice president/manager.

In examining the managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). On review, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to establish what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include managing, ensuring, assisting and aiding, directing and coordinating, and carrying out. The petitioner did not, however, define or clarify these duties. In addition, the petitioner describes the beneficiary as a liaison and a member of various committees; however, the beneficiary's role as a liaison and committee's responsibilities are undefined. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of

proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Further, the petitioner describes the beneficiary as being involved in the management of the non-resident Indian services (25 percent), management of the remittances from business/foreign exchange services (50 percent), and security/protection fund (5 percent). This description indicates that the beneficiary spends 80 percent of his time performing the daily tasks of the company; therefore, the beneficiary is not employed in a primarily managerial capacity. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial capacity. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The beneficiary's job description suggests that the beneficiary spends at most 20 percent of his time overseeing the tasks of his subordinate employees. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. For instance, the beneficiary supervises a head teller, teller, accounts secretary, an NRE secretary, and a secretary. In addition, the petitioner claims that the assistant vice president is under the direction of the beneficiary and the assistant manager reports directly to the beneficiary. However, the organizational chart and job descriptions of the beneficiary's subordinates indicate that the beneficiary's subordinates are not managerial nor supervisory.

In addition, in evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a bachelor's degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). As stated in the Act, "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)(A)(iv) of the Act.

Counsel on appeal claims that the beneficiary's subordinates should be considered professional because the subordinates are highly trained, well versed in the operations of an international banking institution, and responsible for performing highly specialized banking functions. However, the assertions of counsel do not 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 relevant question is whether the supervised positions require an advanced education. The

petitioner has failed to present any evidence suggesting that the supervised positions in this matter require an advanced education. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra*. Therefore, the AAO concludes that the beneficiary is performing as a first-line supervisor of non-professional employees, rather than as a manager.

Further, the description of the beneficiary's duties does not persuasively demonstrate that the beneficiary will have managerial control and authority over a function, department, subdivision, or component of the company. 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).

On appeal, counsel claims that the beneficiary is "responsible for managing the overall activities, managing critical departments, functions, and components." However, 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.

First, as pointed out earlier, the petitioner failed to provide a sufficiently comprehensive and detailed description of the beneficiary's proposed responsibilities. Thus, the petitioner did not provide evidence sufficient to meet the burden of proof. *Matter of Treasure Craft, supra*. Second, as demonstrated above, the beneficiary will be largely performing tasks necessary to produce a product or provide services; thus, the beneficiary is not employed in a managerial capacity. *Matter of Church Scientology International, supra*. In sum, the petitioner has not provided evidence that the beneficiary manages an essential function.

After careful consideration of the evidence, the AAO must conclude that the beneficiary will not be employed in a primarily managerial capacity. For this reason, the petition may not be approved.

Finally, on appeal, counsel cites unpublished decisions to support its positions. The AAO notes that while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.