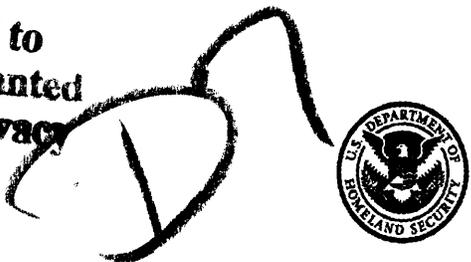
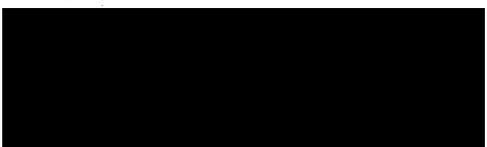


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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



FILE: SRC 02 096 50051 Office: TEXAS SERVICE CENTER

Date: **APR 05 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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, Anan International, Inc., endeavors to classify the beneficiary as an executive 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 Anan Traders Limited of Kenya and is engaged in the private investment business. It seeks to extend the petition's validity and the beneficiary's stay for three years as the U.S. entity's president. The petitioner was incorporated in the State of Florida on August 1, 2000 and has three full-time employees and one independent contractor.

On May 24, 2002, the director denied the petition and determined that the petitioner had not established that the beneficiary will be employed in a primarily executive capacity.

On appeal, counsel states that the beneficiary's duties in the United States are primarily executive. Counsel also asserts that the director erroneously attributed the wages paid to a 12 month period rather than to a three month period.

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.

The issue in this proceeding is whether the beneficiary will be employed in a primarily executive capacity for the United States entity. The petitioner makes no claim that the beneficiary will be performing managerial duties.

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 a December 21, 2001 letter, the petitioner described the beneficiary's proposed U.S. job duties as:

Establish financial goals for our investment; analyze financial reports of 1st investment and establish plans to increase sales; establish performance objectives of store from feedback from customers and employees; develop marketing strategies; responsible for banking matters. Also responsible for locating additional investment businesses to purchase.

On May 24, 2002, the director denied the petition and determined that the proposed duties did not establish that the beneficiary will be employed in a primarily executive capacity. The director noted that the petitioning entity employs three full-time workers and one independent contractor. The director stated, "In 2001, the U.S. entity had a gross revenue of \$144,071 while spending only \$12,915 in total salaries, wages, and compensations of officers."

In examining the executive 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 establishing financial goals, planning to increase sales, and establishing performance objectives. The petitioner did not, however, define the beneficiary's goals and plans or clarify how the beneficiary will establish performance objectives. 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).

In addition, the petitioner describes the beneficiary as being involved in developing marketing strategies and locating additional investment businesses. Since the beneficiary actually develops marketing strategies and locates investment opportunities for the business, he is performing tasks necessary to provide a service or product. 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 or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Moreover, the description of the beneficiary's duties does not persuasively demonstrate that the beneficiary directs the management of the organization or a major component or function of the organization. The petitioner has not indicated exactly what function the beneficiary actually directs. The beneficiary is described as having to "establish performance objectives of store from feedback from customers and employees" and "locating additional investment businesses to purchase." However, it must be evident from the documentation submitted that the majority of the beneficiary's actual daily activities are executive in nature. The description of the beneficiary's duties indicates that he will be directly performing the function of procuring investments and operating the convenient store rather than directing a major component or function of the organization.

Counsel also asserts that the director based his decision on the low wages paid to the employees in 2001 and misinterpreted the number of months the employees were actually paid. In his decision, the director stated that the total annual income was \$144,071, while the petitioner paid only \$12,915 in total salaries, wages, and compensation of officers. Counsel claims that the salaries paid to the U.S. employees did not cover 12 months, rather, the salaries were not paid until September 2001 for three months. The petitioner submitted proof of the wages paid to its employees. The director erroneously based his assertion on a 12 month period rather than a three month period. Therefore, the AAO withdraws this portion of the director's decision.

Further, counsel claims that "the petitioner did locate another investment business . . . and entered into a contract to purchase said business by July 31, 2002." In addition, counsel claims that the investment currently has four employees that the petitioner plans to retain when the transaction has been completed. The petitioner has also hired two additional employees for June 2002. The petitioner submitted the estimated quarterly report for tax years 2001 and 2002 of the wages paid to its current employees. However, the U.S. entity filed the petition on January 31, 2002. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

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

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 shall be dismissed.