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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: WAC 02 176 52044 Office: CALIFORNIA SERVICE CENTER Date: APR 13 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

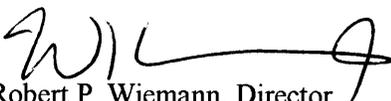
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a new business engaged in importing and marketing Indian products, including rugs, jewelry, and clothes. It currently employs the beneficiary as its chief executive officer, and filed a petition to extend the employment of the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge.

The director denied the petition concluding that the petitioner had failed to establish: (1) that the beneficiary's foreign employer is doing business as a manufacturer of handicrafts and rugs; (2) that the petitioning organization is doing business in the United States; and, (3) that the beneficiary has been employed in the United States in a specialized knowledge capacity;

On appeal, counsel asserts that the beneficiary's foreign employer is operating as a manufacturing company, and is engaged in the marketing and sale of various Indian handicrafts, rugs, and jewelry. Counsel also contends that the beneficiary possesses specialized knowledge of the quality, style, and manufacturing of the company's products, and that "it is only with an expert understanding of all aspects of carpet construction and knowledge of the handicraft and a proper evaluation of the market demand that a person can truly evaluate and market those products in the foreign land." Furthermore, counsel states that Citizenship and Immigration Services erred in determining the petitioner was not doing business in the United States, as the U.S. entity is selling the products of the foreign company. Counsel submits two briefs and additional evidence in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). 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. In addition, 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.

The regulation at 8 C.F.R. § 214.2(l)(3) further 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 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 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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (a) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (b) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (c) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (d) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and
- (e) Evidence of the financial status of the United States operation.

The first issue in this proceeding is whether the beneficiary's foreign employer is doing business as a manufacturer of Indian rugs and handicrafts.

The regulation at 8 C.F.R. § 214.2(l)((1)(ii)(H) defines the phrase "doing business" as:

[T]he regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In a letter submitted with the petition, the petitioner described the beneficiary's foreign employer as a manufacturer and exporter of Indian rugs and handicrafts. The petitioner provided corporate balance sheets for the periods ending March 1999, 2000, and 2001, and a bank letter stating that the foreign company maintained a current account.

In a request for evidence, the director asked that the petitioner submit evidence that the beneficiary's foreign employer was doing business in India. Specifically, the director requested: (1) copies of current business licenses; (2) the most recent corporate balance sheet and statement of income and loss; (3) sales invoices that identify the gross sales amount reported on the income and expenses statement; and, (4) evidence that the company has employees, including payroll records with each employee's name, job title, beginning date of employment, and salary or wages.

In response, the petitioner submitted: (1) a Registration Certificate as a "small scale industrial unit"; (2) a Registration Certificate authorizing the sale of carpets by the foreign company from March 2, 2002 through December 31, 2002; (3) an Import Export Allotment Letter assigning the foreign company an import/export code; (4) the March 2002 balance sheet; (5) an income and expense statement for the period ending March 31,

2002; (6) sales invoices; and, (7) a bank letter verifying the existence of a corporate account. The petitioner also provided payroll records from April 2001 through March 2002, which identified the following employees: managing co-owner, manager, accountant, supervisor, sales executive, clerk, office boy, and peon.

In his decision, the director determined that the beneficiary's foreign employer was not engaged in the manufacturing, marketing and sale of handicrafts and rugs. The director stated that "based on the type of employees as shown on the payroll, there is insufficient evidence to demonstrate that the foreign entity is engaged in the manufacturing [of] handicrafts, rugs, or carpets as claimed." (Emphasis in original).

On appeal, counsel asserts that CIS erred in concluding that the foreign entity was not engaged in the manufacturing, sales, and marketing of Indian products. Counsel, referring to the business licenses and registration certificates submitted by the petitioner, states that the foreign entity has been granted permission to manufacture Indian rugs. Counsel explains that the foreign company maintains facilities for making the rugs, which are used by independent workers who have contracted with the foreign entity. Counsel submits copies of the contracts, which outline the terms and conditions, including labor costs, the use of materials and facilities, and the time period for completion. In addition, counsel provides photographs of the foreign entity's premises.

On review, the record demonstrates that the beneficiary's foreign employer is doing business in India marketing and selling rugs and handicrafts. The petitioner and counsel submitted current business licenses and registration certificates that permit the use of the company's factory for washing carpets, and authorize the foreign entity to sell the carpets. The petitioner also submitted sufficient evidence, including payroll records and financial statements, that the foreign entity employs a staff responsible for selling the company's products.

It remains to be determined, however, whether the beneficiary's foreign employer is authorized and functioning as a manufacturer of Indian carpets. Counsel asserts on appeal that the foreign entity has been granted permission to manufacture carpets, and refers to the contracts with independent workers as evidence that the foreign company is engaged in manufacturing. While the corporate balance sheet for the period ending on March 31, 2002 reflects a payment made to weaving contractors, it is unclear from the record whether the foreign entity actually possesses the appropriate business licenses to operate as a manufacturer. As it was determined above that the foreign entity is doing business in some capacity in India, the issue of whether the foreign company is actually manufacturing rugs is not relevant. The director's decision on this issue will be withdrawn.

The second issue in this proceeding is whether the petitioning organization is doing business in the United States.

As noted above, the regulation at 8 C.F.R. § 214.2(l)((1)(ii)(H) defines the phrase "doing business" as:

[T]he regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In a letter submitted with the petition, the petitioner stated that the U.S. business is a wholesaler and retailer of Indian rugs, jewelry and clothes imported from the beneficiary's foreign employer, as well as purchased from traders in the United States. As evidence of the existence and operation of the U.S. business, the petitioner submitted: Internal Revenue Service (IRS) Form SS-4, Application for Employer Identification Number; a Seller's Permit valid until March 1, 2002; IRS Form 1040, Profit or Loss from Business, for the years 2000 and 2001; sales invoices; purchase invoices; receipts for storage rental; bank statements; and, photographs of the business' inventory.

In his request for additional evidence, the director asked that the petitioner submit the following documentation: (1) the most recent IRS Form 1120 U.S. Corporate Income Tax Return; (2) the most recent corporate financial statements, including the balance sheet and statement of income and loss; (3) copies of sales invoices in chronological order reflecting sales amounts as shown on the statement of income and loss; and, (4) IRS Form W-2 for all employees of the U.S. entity. The director also requested that the petitioner provide a business lease for the U.S. organization, and explain why the record contains four different addresses for the petitioning business.

In response, the petitioner again provided: IRS Form 1040, Profit or Loss from Business, from years 2000 and 2001; the corporate balance sheet and profit and loss account; a letter of verification that the petitioner maintains a bank account; a bank statement for the period ending March 25, 2002; a business tax certificate; a business license; a seller's permit; proof of a yellow pages advertisement; and, a Quarterly Wage and Withholding Report for the period ending September 2002.

The director concluded that the information on IRS Forms 1040 and DE-6 does not support a finding that the U.S. entity has been engaged in the regular, systematic, and continuous provision of goods and services. The director specifically noted that Form DE-6 identifies only one employee of the organization, and Form 1040 reflects gross sales in the amount of \$22,700 for year 2001. The director therefore denied the petition.

On review, it does not appear that the petitioning organization is merely an agent or office of the foreign entity. The evidence in the record, specifically the sales and purchase invoices, establish that the petitioning entity has been doing business purchasing and selling products in the United States. Additionally, while the petitioner's gross sales for year 2001 are not substantial, IRS Form 1040 reflects profits and expenses incurred as a result of doing business in the United States. Furthermore, the petitioner has provided a license and seller's permit authorizing the petitioning organization to engage in business. Therefore, the director's decision on this issue will be withdrawn.

The final issue in this proceeding is whether the beneficiary has been employed in the United States in a specialized knowledge capacity.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

A specialized knowledge professional is further defined at 8 C.F.R. § 214.2(l)(1)(ii)(E) as:

[A]n individual who has specialized knowledge as defined in paragraph (l)(1)(ii)(D) of this section and is a member of the professions as defined in section 101(a)(32) of the Immigration and Nationality Act.

In a letter submitted with the petition, the petitioner outlined the beneficiary's job duties in the United States as:

- Sales and Marketing of the products in US;
- Finding new markets in US for the existing and new products;
- Formulating the pricing for the company products for wholesale and retail sales;
- Coordination between the India office and the US office for importing the products in US on time and take care of the storage, shipping and handling in US;
- Coordinate and interact with various government/local authorities for smooth running of the business operations;
- Resolve the financial issues including timely collection and payment of dues.

The petitioner explained that the beneficiary's knowledge and twenty-two years of experience marketing Indian products are a valuable addition to the U.S. corporation. The petitioner also claimed that the beneficiary's "keen sense in judging the US market and the ability to procure the same from the Indian parent company is a valuable asset."

In a request for additional evidence, the director asked that the petitioner provide detailed descriptions of the beneficiary's job duties in the United States and abroad. Although the petitioner responded to the director's request with evidence pertaining to other issues in this proceeding, the petitioner failed to submit a description of the beneficiary's job responsibilities in the U.S. or abroad.

In his decision, the director determined that the beneficiary was not employed in a specialized knowledge capacity. The director stated that the petitioner has failed to demonstrate that the beneficiary's knowledge is more than just general knowledge that enables him to provide a service. The director also concluded that the beneficiary does not possess an advanced level of knowledge of the processes and procedures of the petitioner's company.

On appeal, counsel maintains that CIS erred in determining that "no specialized knowledge is required in the particular field of business of the Petitioner Company." Counsel claims that the marketing of the petitioning organization's products "requires a specialized knowledge about their quality, their style, the product manufacturing etc to evaluate the value of the same and then to judge the potential markets for the same." Counsel also contends that "an expert understanding of all aspects of carpet construction and knowledge of the handicraft and a proper evaluation of the market demand" is necessary for marketing the foreign company's products in the United States.

On review, the record does not establish that the beneficiary has been employed in a specialized knowledge capacity in the United States. When examining the specialized knowledge 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). As required in the regulations, the petitioner must submit a detailed description sufficient to establish specialized knowledge. *Id.*

While the petitioner outlined job duties performed by the beneficiary in the United States, the petitioner failed to explain how the specific job responsibilities qualify the beneficiary as possessing specialized knowledge. The beneficiary's job duties of researching potential sales markets, determining product prices, and functioning as a liaison between the U.S. and foreign entities do not distinguish the beneficiary's knowledge as superior or unique to the knowledge possessed by other corporate employees. In fact, these job duties are essentially standard responsibilities of any employee working in the areas of marketing or sales. *See* 9 FAM 41.54 N.8.2-2 (to serve in a specialized knowledge capacity, the alien's knowledge must be different from or surpass the ordinary or usual knowledge of an employee in the particular field, and must have been gained through significant prior experience with the petitioning organization). Additionally, although requested by the director, the petitioner neglected to provide a more comprehensive description of the beneficiary's job responsibilities. Although asserted by counsel on appeal, it does not appear that the beneficiary's ability to market the petitioning organization's handicrafts and rugs demonstrates a "special knowledge" of the company, or "an advanced level of knowledge or expertise in the organization's processes and procedures." 8 C.F.R. § 214.2(l)(1)(ii)(D). 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). Also, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Furthermore, the beneficiary's work experiences in the foreign company do not distinguish the beneficiary as an individual possessing specialized knowledge. Counsel contends that an expert understanding of carpet construction, and a specialized knowledge of the quality and style of the company's products is necessary for marketing the foreign company's products in the United States. However, counsel has not provided any evidence that the beneficiary has received training on manufacturing Indian carpets, has personally made an Indian carpet, or has firsthand knowledge of the quality and styles of carpets. The petitioner and counsel essentially assert that the beneficiary has specialized knowledge as a result of his twenty-two years of employment in the foreign company. While the beneficiary's experience "[may have] been valuable in deciding about the products that should be imported and marketed from India," it does not amount to an advanced level of expertise in the organization's process and procedures. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Again, 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).

As the petitioner failed to establish that the beneficiary is employed in a specialized knowledge capacity in the United States, the petition cannot be approved.

Beyond the decision of the director, it remains to be determined whether the requisite relationship exists between the foreign entity and U.S. entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G)(1). The petitioner indicated on the petition that the U.S. business is a branch of the foreign entity. Probative evidence of a

branch office would include the following: a state business license establishing that the foreign corporation is authorized to engage in business activities in the United States; copies of IRS Form 1120-F, U.S. Income Tax Return of a Foreign Corporation; copies of IRS Form 941, Employer's Quarterly Federal Tax Return, listing the branch office as the employer; copies of a lease for office space in the United States; and finally, any state tax forms that demonstrate that the petitioner is a branch office of a foreign entity. In the present matter, the petitioner submitted IRS Form 1040, relating to a sole proprietorship, and a Quarterly Wage and Withholding Report and Payroll Tax Deposit form identifying the U.S. business as the employer. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Additionally, because the tax forms identify the beneficiary as the proprietor of the U.S. business, it remains to be determined whether the beneficiary's services are for a temporary period. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that he will be transferred to an assignment abroad upon completion of his services in the United States. As the appeal will be dismissed on other grounds, these issues need not be further addressed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought rests 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.