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U.S. Citizenship  
and Immigration  
Services

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APR 19 2004

FILE: SRC 02 128 51924 Office: TEXAS SERVICE CENTER Date:

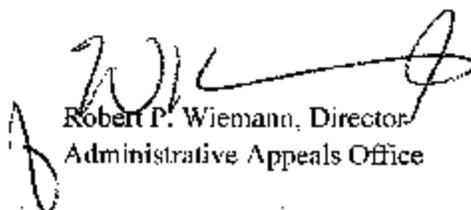
IN RE: Petitioner:  
Beneficiary:

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 petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as being in the business of providing services such as language support and translations and obtaining accommodation and transportation services. It seeks authorization to extend the employment of the beneficiary temporarily in the United States as its vice-president at an annual salary of \$25,000. The director determined that the petitioner did not establish that the U.S. and foreign companies were qualifying organizations. Additionally, the director determined that the petitioner did not establish that the U.S. company was continuously providing a service or producing a product. Finally, the director determined that the petitioner did not submit evidence that the beneficiary has been and would be working in a primarily managerial or executive capacity.

On appeal, counsel submits a brief and additional evidence. Counsel asserts that the petitioner and foreign company are qualifying organizations. Counsel asserts that the petitioner is currently doing business and provides additional evidence. Additionally, counsel states that the beneficiary is operating in an executive capacity and refers to evidence previously submitted.

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)(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.

The United States petitioner was incorporated in 1993. The petitioner states the U.S. company was purchased in full on November 27, 1998 by Ralf Starkmann. The petitioner states it is an affiliate of Hallenbran Starkmann, located in Hamm, Germany. The petitioner did not indicate the number of employees on the Form I-129 or its gross annual income. Counsel for the petitioner stated the initial L visa was approved in March 1999 in order to open the new office and was extended in February 2000 until February 15, 2002. The petitioner seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of \$25,000.

The first issue in this proceeding is whether the petitioner and the foreign company are qualifying organizations.

The regulations at 8 C.F.R. § 214.2(I)(1)(ii)(G) define the term "qualifying organization" as follows:

*Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (I)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

8 C.F.R. § 214.2(I)(1)(ii)(I) states:

*Parent* means a firm, corporation, or other legal entity which has subsidiaries.

8 C.F.R. § 214.2(I)(1)(ii)(J) states:

*Branch* means an operating division or office of the same organization housed in a different location.

8 C.F.R. § 214.2(I)(1)(ii)(K) states:

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

8 C.F.R. § 214.2(I)(1)(ii)(L) states, in pertinent part:

*Affiliate* means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner, German American Travel Services, Inc. located in Florida, claims to be an affiliate of Hallenbrau Starkmann, located in Hamm, Germany. The petitioner states that \_\_\_\_\_ purchased German American Travel Services Inc. in full on November 15, 1998. In support of this claim, the petitioner submitted for the U.S. company the following: a copy of the Articles of Incorporation and one stock certificate (number 2) for one hundred shares owned by \_\_\_\_\_ transferred to \_\_\_\_\_ on November 15, 1998. Additionally, the petitioner submitted a translated document that it called the "business registration" for the

foreign company. This document stated the name of the company as \_\_\_\_\_ the owner of the company as Merchant Ralf Starkmann and the address of the company as Hamm. This document was dated 1987.

On June 1, 2002, the director issued a request for additional evidence, which requested the following documentation regarding the qualifying relationship, in pertinent part:

1. clearly document the current ownership and control of both the US and foreign companies. You may submit stock certificates, copies of corporate bylaws or constitutions which clearly indicate stock ownership, or copies of published annual reports which indicate affiliates and subsidiaries and the percent of ownership held by the parent corporation;
2. copies of stock certificate # 1 and of the stock transfer ledger for the US company.

In response to the request for evidence, counsel explained that stock certificate number 1 was never issued for German American Travel Services, Inc. Counsel stated "[t]he certificate was lost by the prior owners." The petitioner submitted a copy of a stock certificate listing \_\_\_\_\_ as the holder that is partially illegible in addition to a copy of stock certificate number 2 that was previously submitted. The petitioner also submitted a copy of the stock transfer ledger. As proof of ownership and control of the foreign affiliate, the petitioner submitted an organizational chart of the foreign entity and a letter from a German bank recognizing that it is in a favorable relationship with the foreign entity.

In her decision, the director determined the petitioner did not establish that the US and foreign company were both 100 percent owned by \_\_\_\_\_. The stock certificate submitted in response to the request for evidence did not indicate the name of the corporation, the number of shares held and was without dates or numbers. The director determined that the verbal claim that stock certificate number one was lost was not supported by any concrete evidence. Additionally, the director concluded that the registration certificate issued to Ralf Starkmann in 1987 is not proof that \_\_\_\_\_ was the foreign company.

On appeal, counsel reasserts that certificate number 1 was lost. Counsel asserts "[u]pon Mr. \_\_\_\_\_ purchase of the company, certificate number [sic] was executed by the Seller and then owner of 100% of the company transferring 100% of the company to Mr. \_\_\_\_\_." In response to the director's concerns regarding the illegible certificate, counsel explained that she has provided her best copy. The AAO notes that counsel has not explained why there is certificate number 2 and the illegible stock certificate.

On appeal, counsel submits a recently certified copy of the registration of the foreign company with a translation. The AAO notes that the German document indicates the year 1987 as the date of registration but the translation indicates a date of 1967. The German document indicates the foreign company name as \_\_\_\_\_ and the owner as \_\_\_\_\_ businessman. However the petitioner stated that the name of the affiliate company is Hallenbrau Starkmann.

Based on the record of the proceeding, the AAO concludes that \_\_\_\_\_ is the owner of the U.S. petitioner and partially withdraws the director's decision. However, the petitioner has not provided sufficient evidence to demonstrate that \_\_\_\_\_ is the 100 percent owner of Hallenbrau Starkmann in Germany, as stated throughout this petition. Therefore, the petitioner has not demonstrated that the petitioner and the foreign entity are affiliates and have a qualifying relationship. For this reason, the petition must be denied.

The second issue in this proceeding is whether the U.S. company has been doing business as defined by the regulations.

CIS regulations state that the petitioner must provide evidence that the United States entity and the foreign entity have been doing business, as defined at 8 C.F.R. § 214.2 (I)(1)(ii)(1), for the previous year. Doing business is defined as the regular, systematic, and continuous provision of goods and/or services.

In the instant petition, the petitioner provided its IRS Form 1120 corporate tax return for the year 2000 which showed gross receipts or sales as \$4,450. Additionally, the petitioner provided a statement of income for the year ending 2001, which showed a net income of \$25,658. The petitioner also provided copies of payroll journals for September, October, and November 2001 as well as Form 941 quarterly federal tax return dated September 28, 2001. The petitioner submitted a copy of its state occupational license for the tax year 2001 indicating that the type of business is a "129 public service." The lease provided by the petitioner indicates that the premises at 2015 8<sup>th</sup> Terrace S.E. are to be occupied as a residence.

On June 4, 2002, the director requested the following additional evidence regarding the U.S. business and the foreign business, in pertinent part:

- evidence of the business conducted by the U.S. and foreign company;
- commercial leases for both the U.S. and foreign companies
- 2001 annual tax return for the U.S. company;
- state quarterly tax returns for the U.S. company and the foreign company;

On July 17, 2002, in response to the director's request for evidence, the petitioner submitted the 2001 IRS Form 1120 Federal tax return which showed gross receipts or sales as \$127,850. The petitioner submitted numerous invoices that it paid to its vendors for the U.S. company for 2001 but only three invoices it billed to its clients for the month of November 2001. The petitioner submitted a commercial lease for the period of December 1, 2000 until November 30, 2001, signed on November 15, 2000, for the address 247 Spirit Lake Road West 33880, Suite 3, which is the same address listed on the 2001 tax return. The director requested state quarterly payroll tax returns for 2001 and 2002. The petitioner provided federal quarterly tax returns for 2001 and two quarters of 2002.

The petitioner provided documents that counsel states are invoices and receipts for the foreign company that are dated throughout 2001 and 2002. These documents are not translated, contrary to the requirements at 8 C.F.R. § 103.2(b)(3). Additionally, the petitioner provided a copy of a leasing contract between the foreign company and Wal-Mart Germany for the time period February 15, 1999 until September 30, 1999. Also, the petitioner provided documents that counsel states are payroll records for the foreign company that are dated from December 2001 and May 2002. These documents are also not translated.

The director stated she could not verify that the U.S. company was providing a service or producing a product continuously based on the evidence provided by the petitioner.

On appeal, counsel submits additional invoices for the U.S. company dated from January 2001 to January 2002. Counsel states "[t]he petitioner provided extensive documentation concerning its current activities including receipts, invoices, payroll information and current business lease." Counsel also states "the

petitioner provided extensive invoices and receipts from the foreign company indicating its current business activities."

Upon review of the record, the AAO agrees with counsel that the petitioner provided sufficient documentation to demonstrate that the petitioner is currently doing business as defined by the regulations. However, the AAO is unable to verify that the foreign company is doing business because the petitioner did not provide any translations of any of the documents referring to the foreign company. See 8 C.F.R.103.2(b)(3). Simply 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). Therefore, the AAO cannot conclude that the foreign company is a qualifying organization doing business as defined by the regulation at 8 C.F.R. § 214.2(1)(ii)(G)(2). For this additional reason, the petition may not be approved.

The third issue in this proceeding is whether the petitioner has demonstrated that the beneficiary has been and will be performing in a primarily managerial or executive capacity as defined below:

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 support of its claim that the beneficiary is employed in a primarily executive capacity, the petitioner stated that the beneficiary "spends 50% of her day directing the management of the company, particularly with respect to directing the activities of the company's employees and planning the expansion of services." The petitioner also stated "[a]pproximately 30% of her typical day involves directing the marketing efforts of the company." The petitioner indicated that the remaining 20 percent of the beneficiary's time is spent supervising financial aspects of the company operations. The petitioner also stated that the beneficiary spends approximately six months of the year working in the U.S. operations and the rest of the time working for the German affiliate.

On June 4, 2002, the director requested additional evidence. The director requested definitive statements describing the U.S. employment of the beneficiary. The petitioner responded stating that there were two employees with the title Administrative Assistant/CSR who answered phones, assisted customers, obtained accommodations and transportation. Counsel states there was one sub-contractor who provided language services and obtained accommodations and transportation. Additionally, counsel states the beneficiary oversees two direct employees and that "over 5 subcontractors report to beneficiary." Although the petitioner claims to employ "over 5 subcontractors," the evidence indicates one contractor, at most. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Counsel has not explained why the evidence provided indicates only one subcontractor yet states that the beneficiary oversees more than five subcontractors.

The director stated that the state quarterly tax returns were not provided. The director stated "[t]he petitioner did not submit evidence to show what the 1099 submitted signified . . . ." The director determined that the petitioner has not submitted persuasive evidence to show that any employees, including the beneficiary, are working for the business. The director concluded the petitioner did not support its claim that the beneficiary has been and would be working in a primarily managerial or executive capacity.

On appeal, counsel states the petitioner "submitted extensive evidence concerning the beneficiaries [sic] duties and those of the employees, including job descriptions, hours worked, payroll journals and tax forms."

When examining the executive or managerial capacity of the beneficiary, CIS will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii).

The beneficiary's duties listed in the instant petition employs words and phrases such as "manage and direct," "determine staffing needs," "establish target contract goals for each month," "establish and implement marketing plan," "determine best use of company resources." These words and phrases are, however, generalities. For example, they do not identify what concrete "goals" or "plans" the beneficiary will develop or establish. The

petitioner does not describe in detail the duties the beneficiary supposedly performs.

In sum, the petitioner described the beneficiary's duties in general terms. The petitioner's vague descriptions provide insufficient detail to allow CIS to determine the beneficiary's day-to-day responsibilities and activities. 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. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990). Going on record without supporting documentary evidence is insufficient to meet the burden of proof in these proceedings. *Thea US, Inc. v. INS*, 48 F.Supp. 2d 22, 24-5 (D.D.C. 1999); *see generally Republic of Transkei v. INS*, 923 F.2d 175 (D.C. Cir. 1991) (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).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The record does not establish that a majority of the beneficiary's duties have been or will be directing the management of the organization. The petitioner has not demonstrated that the beneficiary exercises wide latitude in discretionary decision-making. The petitioner has not demonstrated that it has reached or will reach a level of organizational complexity wherein the hiring and firing of personnel, discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For this additional reason, the petition may not be approved.

On review, the record as presently constituted is not persuasive in demonstrating that the petitioner and foreign company have a qualifying relation or the foreign company is doing business and that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The record does not establish that a majority of the beneficiary's duties have been or will be directing the management of the organization. For these reasons, 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.

**ORDER:** The appeal is dismissed.