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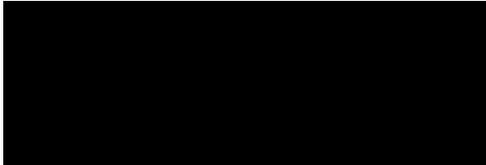
U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



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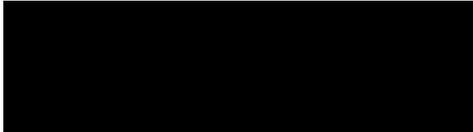
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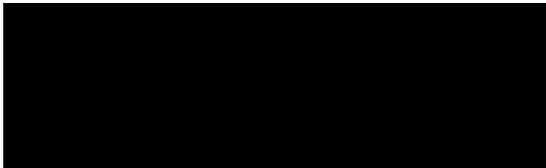
FILE: WAC 03 022 55231 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



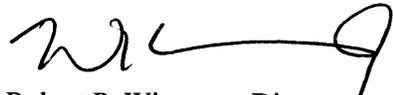
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 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 being an importer of spices from Jordan. It seeks to extend the beneficiary's stay in the United States as its executive manager. The director determined that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in an executive or managerial capacity.

On appeal, counsel disagrees with the director's determination.

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.

According to the documentary evidence contained in the record, the petitioner was incorporated in 2001 as an importer of spices from Jordan. The petitioner claims that the U.S. entity is a branch of Al Tahona Alzar, located in Jordan. The petitioner claims one employee, the beneficiary, and \$129,000.00 in gross income. The petitioner seeks to continue the use of the beneficiary's services as an executive manager for a period of three years, at a yearly salary of \$80,000.

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) states that a visa petition under section 101(a)(15)(L) 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 (1)(1)(ii)(G) of this section;
- B) Evidence that the United States entity has been doing business as defined in paragraph (1)(1)(ii)(H);
- 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 managerial or executive capacity; and
- E) Evidence of the financial status of the United States operation.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity.

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 described the beneficiary’s job duties as: “oversees the financing and general management at the US branch; review [sic] annual budget and allocate expenses. Designed contracts [sic] approve deals with overseas clients.”

In a letter dated April 17, 2003, the beneficiary described his duties with the U.S. entity by stating that he: directed and coordinated all the activities of the company; managed the company and spent approximately 25 percent to 30 percent of his time engaged in non-managerial activities associated with the day-to-day operations of the company; engaged in market research; met with potential customers and established relationships with customers; developed a budget; and developed a schedule for the import of products from Jordan. The beneficiary further stated that he manages all financial operations and oversees all daily operation for the U.S. entity.

The director, in denying the petition stated that the evidence of record indicated that the U.S. entity had only one employee. The director further stated that there was no evidence submitted to establish salaries paid to U.S. employees. The director also stated that the preponderance of the evidence showed that the beneficiary’s duties would continue to be directly providing the services of the business, and that the petitioner had failed to submit sufficient evidence to establish that the beneficiary will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing non-qualifying duties.

On appeal, counsel asserts that in the letter, dated April 17, 2003, the petitioner requested that the director adjudicate the petition and grant L-1B status in lieu of L-1A status, if appropriate. Counsel also contends that the petitioner is submitting a new petition for L-1B status on appeal and requests that such status is granted retroactively. Counsel further asserts that the beneficiary possesses the requisite specialized knowledge of the company’s products and operations. Counsel resubmits the letter, dated April 17, 2003, as evidence in support of her contentions.

On review, the record as presently constituted is not persuasive in demonstrating that the petitioner will be performing his duties in a managerial or executive capacity. Future projections of company expansion cannot be used to establish intercompany transferee status where, as in the instant matter, the petitioning entity is not a new office. The petitioner implies throughout the petition how the entity is still in the developing phases. However, the regulations at 8 C.F.R. § 214.2(l)(3)(v)(C) allow the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no

provision in the regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant case, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

Furthermore, the petitioner's description of the beneficiary's duties are not supported by documentary evidence, and does not provide sufficient information regarding his direction of the management of the petitioner. The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as being responsible for directing and coordinating all the activities of the company, managing all financial operations, and designing contracts and developing relationships with U.S. customers are without any context in which to reach a determination as to whether they would be qualifying as executive or managerial in nature. 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).

Moreover, the petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that he will be directing the management of the organization or a major component or function of the organization, that he will be establishing goals and policies, or that he will be exercising a wide latitude in discretionary decision-making. There is no evidence submitted to show the number of hours attributed to each of the beneficiary's duties. Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties are managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). The petitioner claims that the beneficiary will be managing the overall operations of the U.S. entity. However, rather than managing a major department, subdivision, function, or component of the organization, it appears that he will actually be performing the services associated with selling and distributing the imported spices. As case law confirms, an employee who primarily performs the tasks necessary to produce a product or to provide a service 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).

Further, the petitioner's evidence is not sufficient in establishing that the beneficiary will be managing a subordinate staff who will relieve him from performing non-qualifying duties. The evidence establishes that at the time the petition was filed, the beneficiary was the only employee of the U.S. entity. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title. In conclusion, the petitioner has failed to demonstrate that the beneficiary will be employed in the United States in a qualifying managerial or executive capacity. Therefore, the beneficiary is ineligible for classification under section 101(a)(15)(L) of the Act. Consequently, the appeal will be dismissed.

The AAO now turns to counsel's statement on appeal concerning the petitioner's request for a change in the beneficiary's classification from an L-1A intercompany transferee (manager/executive) to an L-1B intracompany transferee (an employee with specialized knowledge). According to counsel, the petitioner requested this change in response to the director's request for additional evidence.

Citizenship and Immigration Services (CIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). If the petitioner believed that the beneficiary was eligible for this nonimmigrant visa classification as an employee who possessed specialized knowledge, the petitioner was required to request such classification when filing the petition. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). The petitioner cannot request such a change now on appeal. The AAO notes that, if the petitioner wishes to seek classification of the beneficiary as an L-1B intracompany transferee, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

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.