



U.S. Citizenship
and Immigration
Services

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FILE: EAC 03 127 53477 Office: VERMONT SERVICE CENTER

Date:

FEB 03 2004

IN RE: Petitioner:
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]

PUBLIC COPY

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

The petitioner, Hajer United, Inc., avers that it is the subsidiary of a Saudi Arabian company, Sami Al Ali Establishment. The petitioner states that it provides import, export, and cleaning services. The U.S. entity was incorporated in the Commonwealth of Virginia on February 20, 2001. The petitioner now seeks to hire the beneficiary as a new employee. Consequently, in March 2003, the U.S. entity filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) for three years. The petitioner seeks to employ the beneficiary as the U.S. entity's president at an annual salary of \$40,000.

On May 30, 2003, the director concluded, however, that: (1) the beneficiary will not perform primarily managerial or executive duties in the United States; (2) it is questionable whether the petitioner is doing business; and (3) it is unclear what the petitioner's business address is. Consequently, the director denied the petition.

On appeal, the petitioner's counsel asserts that the beneficiary's proposed duties in the United States will be primarily managerial and executive. Additionally, counsel asserts that the petitioner's business address is clear and that the petitioner is doing business.

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.

Under 8 C.F.R. § 214.2(l)(3), 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.

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.

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.

Initially, the AAO will determine whether the beneficiary’s proposed duties in the United States are primarily executive or managerial. When examining the executive or 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). Moreover, a petitioner cannot claim that some of the duties of the proffered position entail executive responsibilities, while other duties are managerial. A petitioner must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are *either* in an executive *or* managerial capacity. *Id.*

On Form I-129, the petitioner stated that the beneficiary's duties in the United States will be to "plan and direct the operations of the company." The beneficiary's "[d]uties and responsibilities [will] include formulating policies, managing daily operations, and planning the use of human resources."

An organizational chart accompanied the February 28, 2003 letter. The chart depicted the beneficiary as president. The chart described the beneficiary as supervising Tatiana Picado, a secretary; Maher Haroon, an accountant; Omar Hamdani who as a director of "maintainers-cleaning" supervises unnamed "cleaning ladies"; and an unnamed director of imports and exports.

The director determined that the above descriptions were inadequate to establish that the beneficiary would be performing managerial or executive duties. Consequently, on March 27, 2003, the director issued a request for evidence. Specifically, the director asked the petitioner to "[s]ubmit a comprehensive description of the beneficiary's proposed duties." Additionally, the director asked:

1. How many subordinate supervisors are or will be under the beneficiary's management?
2. What are the job titles and job duties of those employees?
3. What executive/managerial and technical skills are required to perform the duties in the United States?
4. How much of the time spent by the beneficiary is or will be allotted to executive/managerial duties and how much to other non-executive functions?
5. What degree of discretionary authority in day-to-day operations does or will the beneficiary have in the United States position?

In response to the questions regarding the beneficiary and his subordinate employees, the petitioner submitted a January 10, 2003 letter from the petitioner's claimed Saudi Arabian parent and two May 21, 2003 letters from the petitioner. In relevant part, the January 10, 2003 letter stated, "[The beneficiary] has a main task to establish a place to locate an office, hire employees, train and supervise employees, contact possible clients and establish connection with them, as well as to supervise the completion of every contract until it's [sic] conclusion." The May 21, 2003 letter addressing the beneficiary's proposed duties indicates that the beneficiary will:

1. Confer with parent company officials to plan business objectives, to develop organizational policies[,] to coordinate functions and operations between divisions and departments, and to establish responsibilities and procedures for obtaining objectives.
2. Review activity reports and financial statements to determine progress and status in attaining objectives and revises [sic] objectives and plans in accordance with current conditions.
3. Direct and coordinate formulation of financial programs to provide funding for new operations to maximize returns on investments, and to increase productivity.

4. Plan and develop industrial, labor, and public relations policies designed to improve company's image and relations with customers, employees, and public.
5. Evaluates [*sic*] performance of managers and supervisors for compliance with established policies and objectives of firm and contributions in attaining objectives.
6. [Be r]esponsible for daily operation and management of the branch, supervising personnel in the company, hiring and firing employees, review[ing] and evaluat[ing] employees' performance at the current beginning state until all the manager positions are filled.

Finally, on appeal, counsel asserts that the beneficiary "will be securing new clients." Furthermore, counsel maintains, "The beneficiary has already replaced many of his duties with his subordinate officers who handle the allocation of cleaning staff to the various sites."

The May 21, 2003 letter addressing the petitioner's "management structure and personnel structure" states that the petitioner currently employs six employees: "a manager, a secretary and four cleaning ladies." The letter neither provides these six employees' names nor lists their daily duties. Additionally, the letter lists the proposed duties of four supervisors who will serve as the beneficiary's future subordinates. The subordinates' titles will be: operation manager; import and export manager; office manager; and marketing and sale[s] manager. The petitioner claims that these subordinate positions will be filled by 2006.

In response to the request for the evidence, the petitioner submitted a year 2002 Internal Revenue Service (IRS) Form 1120-A, U.S. Corporation Short-Form Income Tax Return. Line 12 reveals no compensation of officers, while line 13 reports no salaries and wages.

The duties listed above are too broad and nonspecific to convey an understanding of the beneficiary's proposed daily responsibilities. As an illustration, several elements of the proposed duties characterize the beneficiary as creating "policies" and "objectives." Likewise, the proposed duties frequently depict the beneficiary as "plan[ing]," "direct[ing]," "develop[ing]," and coordinat[ing]" tasks; nevertheless, the petitioner does not define these terms. Additionally, the petitioner generally paraphrased the statutory definitions of "managerial" and "executive" capacity. See sections 101(a)(44)(A)(i), (iv) and 101(a)(44)(B)(iii) of the Act. For example, the petitioner depicted the beneficiary as having the authority to hire, fire, and supervise employees and exercise authority over policy.

Going on record without supporting documentary evidence is insufficient for the purpose of meeting the burden of proof in these proceedings. *Ikea 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). Additionally, specifics are 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).

Additionally, the job duties depicted above establish that the beneficiary will devote a substantial portion of his time to marketing. For example, he "will be securing new clients," "contact[ing] possible clients to

establish connection[s] with them,” and “plan[ning] and develop[ing] industrial, labor, and public relations policies designed to improve [the petitioner’s] image and relations with customers, employees, and [the] public. Marketing duties, by definition, qualify as performing tasks necessary to provide a service or produce a product. Moreover, the beneficiary will be performing tasks necessary to produce a product or provide a service. For instance, he will “establish a place to locate an office, hire employees, train and supervise employees,” “review activity reports and financial statements,” and “[be r]esponsible for daily operation of the branch.” An employee who primarily performs the tasks necessary to produce a product or 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).

The AAO notes a further deficiency in the petition; specifically, the U.S. entity has not demonstrated that the beneficiary will primarily supervise a subordinate staff of professional, managerial, or supervisory personnel who can relieve him from performing nonqualifying overseas duties. See section 101(a)(44)(A)(ii) of the Act. In particular, section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states, “[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).

As noted above, at the time of filing, the petitioner claimed the beneficiary, a secretary, an accountant, a director of “maintainers-cleaning,” and an unspecified number of “cleaning ladies,” and a director of imports and exports as employees. However, in response to the request for evidence, the petitioner claimed a manager, a secretary, and four cleaning ladies as employees. Despite claiming to have employees, the petitioner reported no compensation of officers or salaries and wages on the IRS 2002 Form 1120-A. The petitioner provided no independent objective evidence to resolve these inconsistencies. The failure to provide such proof casts doubt on the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-2 (BIA 1988).

Furthermore, the request for evidence specifically asked for a description of the employees’ duties as well as the percentage of time the beneficiary will spend on managerial or executive duties. The petitioner, however, provided no description of the current employees’ duties or the percentage of time the beneficiary will devote to managerial or executive duties. “Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition.” 8 C.F.R. § 103.2(b)(14). In addition, the lack of job descriptions precludes CIS from determining whether the subordinate employees would be able to relieve the beneficiary from performing nonqualifying duties. Finally, the petitioner claims that the beneficiary will serve primarily as a manager or executive because the U.S. plans to hire four subordinate managers by 2006. CIS may not approve a visa petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). Therefore, the numerous duties listed for the four planned managers are not relevant in the instant matter.

In sum, the petitioner’s inconsistent submissions as well as the beneficiary’s vaguely defined responsibilities, marketing and production-oriented duties, and lack of verifiable subordinate professional, managerial, or supervisory personnel preclude CIS from classifying the beneficiary as an executive or managerial employee.

The AAO now turns to the issue of whether the petitioner is doing business. *Doing business* means the 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. 8 C.F.R. § 214.2(l) (1)(ii)(B). Initially, the AAO notes that the petitioner's February 28, 2003 letter attached to Form I-129 suggests that the U.S. entity is not actually doing business. Specifically, the letter stated: "[The petitioner] will substantially begin its business as soon as its president[, the beneficiary,] is on his duty."

In response to the request for evidence, the petitioner submitted documentation purporting to establish that the U.S. entity had been doing business. Specifically, the documentation included photocopied photographs illustrating the exterior, lobby, and hallways of the office building where the petitioner's office is purportedly located. Additionally, the petitioner submitted photocopied photographs of the interior of the petitioner's alleged office as well as photocopied photographs of locations where the petitioner has purportedly rendered cleaning services. The director correctly concluded that the photocopies cannot establish that the U.S. has been doing business. Furthermore, the AAO notes that, although the U.S. entity's business name appears in the photographs, the pictures themselves depict generic scenes. Thus, it is difficult to determine whether the photographs depict the petitioner's actual business location and clients. As noted earlier, going on record without supporting documentary evidence is insufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra*.

Additionally, the documentation comprised eight invoices for cleaning services the petitioner claims to have rendered. Of those invoices, five were to the same client, Prince Cafe and Restaurant. All but one of the invoices were for work performed during or after the month in which the U.S. entity filed the petition and reflect at most an eight-week period. The record contains a photocopied \$650.00 check from Prince Cafe and Restaurant dated May 5, 2003, presumably, in payment for the February 17, 2003 invoice for \$650.00. As noted earlier, CIS may not approve a visa petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire, supra*. The record contains a photocopy of one other check for \$50.00 from Resha T. Holman in Okolona, Mississippi. The petitioner provided no explanation why it performed services in Mississippi when its business appears to be in metropolitan Washington, DC. This inconsistency further casts doubt on the reliability and sufficiency of the petitioner's evidence. *Matter of Ho, supra*.

The record further contains two e-mails alerting the petitioner to two potential opportunities; however, the evidence does not establish whether these notifications resulted in the provision of goods or services. Similarly, the record contains advertising handbills distributed on the petitioner's behalf; however, no evidence establishes whether distribution of these handbills resulted in any work. The record also contains bank statements for January, February, and March 2003 as well as business licenses for 2002. These items do not necessarily establish, however, that the petitioner earned any income due to import, export, or cleaning activities. The AAO acknowledges that the bank statements reflect small deposits; however, the petitioner did not explain whether the deposits reflected income due to import, export, or cleaning activities. Again, going on record without supporting documentary evidence is insufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra*.

On appeal, the petitioner asserts that the director erroneously concluded that 5202 Leesburg Pike is a different address from One Skyline Place. The AAO agrees. The addresses are different descriptions for the same location; consequently, the AAO withdraws the director's decision on that issue. Nevertheless, the director correctly observed that the record cannot definitively establish the petitioner's address. Specifically, three

different addresses for the petitioner appear throughout the record: (1) 5205 Leesburg Pike, Suite 211, Falls Church, VA 22041; (2) 5800 Quantrell Avenue, #610, Alexandria, VA 22312; and (3) P.O. Box 11953, Alexandria, VA 22312. The inconsistent addresses cast doubt on the reliability and sufficiency of the petitioner's evidence. *Matter of Ho, supra*.

In sum, the unclear photocopied photographs; limited number of invoices; post-petition dates when work allegedly occurred; unexplained bank deposits; incongruous check from Mississippi; inconsistent addresses, and general lack of documented business activity between February 2001, the petitioner's incorporation date, and March 2003, the petition's filing date; preclude CIS from finding that the petitioner has been doing business.

Beyond the decision of the director, the AAO observes that the beneficiary has not served at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition in a managerial or executive position. See 8 C.F.R. §§ 214.2(l)(3)(iii) and (iv). The AAO will first discuss whether the beneficiary has served in a managerial or executive position abroad. Second, the AAO will examine whether the petitioner has a qualifying relationship with a foreign organization.

On Form I-129, the petitioner stated that the beneficiary's duties abroad are to plan, direct, or coordinate "the operations of the company, especially international imports and exports and branches abroad." An organizational chart provided with the Form I-129 identified the beneficiary as the overseas entity's vice president. According to the chart, the beneficiary supervises a storage manager, an accountant, an attorney, and two store men. The chart neither described the petitioner's nor his subordinates' duties. A resume supplied with the Form I-129 provided no description of the beneficiary's duties as vice president. The petitioner provided no further details. Again, going on record without supporting documentary evidence is insufficient for the purpose of meeting the burden of proof in these proceedings. *Ikea US, Inc. v. INS, supra*; *Republic of Transkei v. INS, supra*; *Matter of Treasure Craft of California, supra*. Additionally, specifics are 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, supra*. In sum, the beneficiary has not served in a managerial or executive capacity abroad. However, as the appeal will be dismissed, the AAO will not examine this issue any further.

Also, beyond the decision of the director, the AAO concludes that is questionable whether a qualifying relationship exists between the U.S. and Saudi Arabian entities. The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define a "qualifying organization" and related terms as:

(G) *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 (l)(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.

* * *

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

(J) *Branch* means an operation division or office of the same organization housed in a different location.

(K) *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.

(L) *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 regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this nonimmigrant visa petition. *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 595 (Comm. 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International, supra*.

The record contains inadequate evidence regarding the structure and ownership of the U.S. entity. Specifically, the petitioner's articles of incorporation dated February 13, 2001, authorize the U.S. entity to issue 1,000 shares of common stock. Counsel's February 28, 2003 letter attached to Form I-129 avers that the Saudi Arabian entity owns 100 percent of the shares of the U.S. entity. The assertions of counsel do not, however, 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). In this instance, the record contains no stock ledgers or certificates demonstrating that the petitioner ever issued any of the stock. Therefore, the record cannot establish that the U.S. entity is, as the petitioner claims, the wholly-owned subsidiary of a Saudi Arabian parent. The lack of stock ownership records also fails to establish that the petitioner is affiliated with the Saudi Arabian company. As noted earlier, going on record without supporting documentary evidence is

insufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra.*

Additionally, the record contains inconsistent evidence regarding the structure and ownership of the U.S. entity. For instance, numerous documents in the record suggest that the petitioner is doing business as a cleaning company, Magic Fingers Cleaning Services. Magic Fingers Cleaning Services' business plan states, however, in section 3.0: "Magic Fingers Cleaning is a newly formed company to offer cleaning service [*sic*]. The investor and the only owner, Sami Al Ali, is a business graduate and came from a well known business family." Sami Al Ali is the beneficiary. Furthermore, the petitioner submitted no governmental documents indicating that the petitioner has established a relationship with Magic Fingers Cleaning Services. Therefore, again, it is questionable who owns the U.S. entity. Failure to provide independent objective evidence to resolve any inconsistencies in the record may cast doubt on the reliability and sufficiency of the remaining evidence. *Matter of Ho, supra.*

Finally, two documents submitted in response to the request for evidence, namely, a January 10, 2003 letter and a May 21, 2003 letter describing the beneficiary's proposed duties, refer to the petitioner as a "branch" office. However, branch offices are not incorporated in the United States and must file IRS Form 1120-F, rather than IRS Forms 1120 or 1120-A. The record indicates that the petitioner is incorporated in the Commonwealth of Virginia and filed an IRS Form 1120-A. The evidence, therefore, establishes that the petitioner is not a branch office.

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 satisfied this burden.

ORDER: The appeal is dismissed.