

PUBLIC COPY

U.S. Department of Homeland Security

Citizenship and Immigration Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

D7

ADMINISTRATIVE APPEALS OFFICE
CIS, ROOM 20 MASS, 3/F
425 Street, N. W.
Washington, D. C. 20536

[REDACTED]

FEB 12 2004

FILE: WAC 02 041 55094 Office: CALIFORNIA SERVICE CENTER Date:

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]

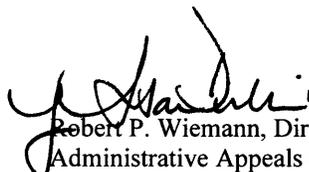
INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


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 claims to be in the restaurant and boutique business. It seeks to employ the beneficiary temporarily in the United States as its director of product positioning. The director determined that the petitioner failed to submit sufficient evidence to show that the beneficiary had been employed abroad in a managerial or executive capacity for one continuous year by a qualifying organization within the three years preceding the filing of the petition.

On appeal, counsel disagrees with the director's determination and asserts that sufficient evidence has been submitted to establish that the beneficiary had been employed for one continuous year within the three years preceding the filing of the petition in a managerial or executive capacity.

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(1)(1)(ii) states, in part:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(1)(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 (1)(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.

According to the documentary evidence contained in the record, the petitioner was established in 1998 and claims to be in the restaurant and boutique business. The petitioner claims that the U.S. entity is a subsidiary of PT Mayakoro Sejahtera, located in Indonesia. The petitioner seeks to utilize the beneficiary's services as director of product positioning for a period of three years, at a yearly salary of \$45,000.

The issue in this proceeding is whether the petitioner has established that the beneficiary had been employed abroad in a managerial or executive capacity for one continuous year by a qualifying organization within the three years preceding the filing of the petition.

In the petition, the petitioner describes the beneficiary's job duties with the foreign entity as: "Analyze, Design, and Implement artistic and aesthetic designs of Carnival Mall. 'Seed Stores', and Millennium Mall. Design, and Implemented mall-wide seasonal

and cultural promotional sales events." The petitioner summarizes the beneficiary's education and work experience in the petition as:

1999-2000 Post Graduate Studies of Oriental Arts,
Beijing Language and Culture University, Beijing, China

1994-present Aesthetic Director/Product Development
Director [REDACTED] Sejahtera, Jakarta, Indonesia

In a support letter from the foreign entity, dated November 1, 2001, the president director stated that the beneficiary has continuously held the position of Aesthetic Director since 1994, and Product Development Director since 1998. He continued by stating that the beneficiary has been directly responsible for designing and integrating tenant-and visitor-sensitive designs for the two largest shopping centers in Batam Island in Indonesia, as well as developing "seed stores" for catalyst in tenanting PT. Mayakoro Sejahtera's shopping centers. The president director also stated that for the past year the beneficiary has been in the United States while his wife attends an American university. He concludes in the letter by stating that from time to time the beneficiary has completed projects for the benefit of the company in Batam and that he participates in policy decisions as an officer of the company.

In a support letter from the U.S. entity, dated November 1, 2001, its president stated that the beneficiary had worked for the foreign entity since 1994, as the Aesthetic Director and concurrently as the Product Development Director since 1998. He further stated that the beneficiary as the Aesthetic Director has been involved in the analysis and aesthetic design of the foreign entity's real property holdings as well as the implementation of seasonal and cultural promotional events. The president also stated that the beneficiary, as Product Development Director, has been responsible for leasing stores in the foreign entity's malls as well as the hotel spa and theater, and for increasing visitor traffic to the company's properties. The president also stated that the beneficiary "has been on a leave of absence from the Batam office and in the United States while his wife is studying in the United States."

Evidence contained in the record demonstrates that the beneficiary entered into the United States under an F2 nonimmigrant classification as a dependent spouse of a student on July 27, 2000.

In his resume, the beneficiary provided the following as his work experience:

Present-1994 Aesthetic Director
PT. Mayakoro Sejahtera, Jakarta, Indonesia.

- Analyze, Design, and Implement artistic and aesthetic designs of Caranaval [sic] Mall and Millennium Mall (the two largest regional shopping centers in Batam, Indonesia) which are:
 - o Sensitive to the traditional and national target market retailers,
 - o Attractive to the challengingly-diverse socio-economic characters of the visitors traffic,
 - o Constrained to the architecture and budgetary limits of the developers.
- Design, and Implemented mall-wide seasonal and cultural promotional and sale events.
- The success of these programs are evident in the malls occupancy levels of 94% and 100% respectively.

Present-1998 Product Development Director

██████████ Batam for PT. ██████████
Jakarta, Indonesia.

The director determined that the evidence initially submitted was insufficient to show that the beneficiary had been employed by the foreign entity for one continuous year within three years preceding the filing of the petition, and thereafter, requested additional evidence, including Form I-20A-B/I-201D, a letter of current school attendance, current Employment Authorization Documentation, and evidence of the beneficiary's current immigration status.

In response to the director's request for additional evidence, the petitioner submitted a computer print out of the beneficiary's wife's school registration information, which indicated that she was enrolled in some classes at the El Camino Community College from January 12, 2002 to May 24, 2002. The petitioner also noted that the beneficiary did not have employment authorization, and that the beneficiary remained in F2 status due to his wife's continued enrollment in college.

The director determined that the petitioner had failed to submit sufficient evidence to show that the beneficiary had been employed abroad in a managerial or executive capacity for one continuous year by a qualifying organization within the three

years preceding the filing of the petition. The director stated that evidence submitted shows that the beneficiary was employed by the foreign entity in 1994 and 1997. The director further stated that the beneficiary's resume states that he was the Product Development Director for the foreign entity from Present-1998. However, the resume does not provide a description of the beneficiary's duties or responsibilities during that period, nor is there an explanation given for his employment thereafter. The director stated that the beneficiary did his post-graduate studies in Beijing, China in 2000, and in July 27, 2000, he was admitted to the United States under an F-2 nonimmigrant visa classification. The director stated that the beneficiary's employment records and resume do not indicate that he was employed with the foreign entity for at least one year in the last three years prior to the filing of the petition.

On appeal, counsel asserts his disagreement with the director's decision. Counsel contends that the beneficiary has been employed by the foreign entity for one continuous year within the three years preceding the filing of the petition. Counsel submits a brief and evidence in support of his contention. Counsel asserts that removing the time period for which the beneficiary has been in the United States (July 27, 2000 to November 15, 2001) from the three year period preceding the filing of the petition leaves a remainder of over 20 months of continuous employment by the beneficiary with the foreign entity. Counsel further contends that the beneficiary's time spent in China at the Beijing Language and Culture University was authorized by the foreign entity and was for the purpose of expanding the beneficiary's knowledge of Chinese and Asian art for the benefit of the foreign entity. On appeal the petitioner describes the beneficiary's job duties as Product Development Director as:

[The beneficiary's] responsibility was to design and implement a series of "seed stores", defined as temporary catalyst retail stores designed to speed-up the rate of occupancy of the mall (-analogous to show house of new residential projects). He designed these "seed stores" to have tremendous window appeal (-analogous to a house's curb appeal), without necessarily high inventory or personnel requirements.

The petitioner also submits copies of Form I-20A-B/I-201D, which indicate that the beneficiary's spouse was enrolled in an English as a second language course at El Camino Community College from August 8, 200 to August 7, 2001, and a computer science course from January 4, 2001 to December 20, 2003. The petitioner submits

a verification of enrollment letter, dated July 29, 2002, which indicates that the beneficiary's spouse has been in good academic standing at the El Camino Community College since January 2001, and that she was enrolled full-time for the Spring 2002 semester. In a letter, dated August 8, 2002, the beneficiary indicates that he was sent to Beijing, China to learn the language and art of the Chinese people. He continues by stating that while he was there he purchased miscellaneous things for the company in Batam. The beneficiary also describes his position at Batam Island as a research developer and signed the letter as "Geoffrey Tjakra, Research Development Director." The petitioner also submits untranslated documents.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary had been employed abroad in a managerial or executive capacity for one continuous year by a qualifying organization within the three years preceding the filing of the petition in a managerial or executive capacity. The record shows that the beneficiary was employed by the foreign entity in 1994 as Aesthetic Director. It also shows that the beneficiary was employed in 1998 by the foreign entity as Product Development Director. The evidence further shows that the beneficiary attended the Beijing Language and Culture University from 1999 to 2000. The record also reflects that the beneficiary has been in the United States from July 27, 2000 to November 15, 2001. It is noted that the petition in the instant case was filed November 15, 2001.

Contrary to counsel's contentions, there has been no evidence submitted to establish that the beneficiary was employed full-time by the foreign entity while studying full-time at the Beijing, China University. There has been no evidence provided to determine the exact dates of the beneficiary's enrollment at the Beijing, China University. In addition, there has been no independent documentary evidence presented by the petitioner to show that the beneficiary was employed full-time by the foreign entity during his stay in the United States in F2 nonimmigrant status. At best, the evidence shows that the beneficiary has been employed by the foreign entity, but not for one continuous year, within the three years preceding the filing of the petition.

The petitioner submits untranslated payroll documents on appeal. However, these documents are not sufficient to demonstrate that the beneficiary, within three years preceding the application for change of status within the United States, has been employed abroad in a qualifying capacity involving managerial or

executive duties, for one continuous year by a qualifying organization. 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Without a translation, CIS cannot find that the payroll documents indicate that the beneficiary was employed by the foreign entity.

Furthermore, although it is counsel's contention that the beneficiary has been employed by the foreign entity in a managerial or executive capacity for more than one continuous year, he has failed to articulate or elaborate on any duty of the beneficiary that might be considered to require managerial or executive skills. The assertions made by counsel are not supported by the record. 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). The assertions of counsel do not 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 addition, there are ambiguities and grave inconsistencies contained in the record regarding the beneficiary's affiliation with the foreign entity during his stay in the United States, the beneficiary's position titles, his position descriptions, and inconsistencies in the beneficiary's job duties while employed by the foreign entity. With regard to the beneficiary's status while in the United States, the president director of the foreign entity stated that the beneficiary has been in the United States while his wife attends an American university, and that "from time to time he has completed projects for the benefit of the company in Batam and participates in policy decisions as an officer of the company. On the other hand, the president of the U.S. entity stated "[the beneficiary] has been on a leave of absence from the Batam office and in the United States while his wife is studying in the United States." In addition, the foreign entity's president director stated in the letter, dated November 1, 2001, that the beneficiary has continuously held the position of Aesthetic Director since 1994, and Product Development Director since 1998. In contrast, the president of the U.S. entity in the letter dated November 1, 2001, stated that the beneficiary had worked for the foreign entity since 1994, as the Aesthetic Director and

concurrently as the Product Development Director since 1998. Furthermore, the beneficiary stated in his resume his titles as "Aesthetic Director" and "Product Development Director" while in a statement made on appeal he describes his position as "Research Development Director." Not only are there inconsistencies in the beneficiary's titles, but there are also inconsistencies in the job descriptions given by the beneficiary. In his resume, the beneficiary states that he analyzes, designs, and implements artistic and aesthetic designs for the mall and mall-wide seasonal and cultural events. In contrast, the beneficiary, on appeal, states that he attends board meetings, meets with the research and development team, researches books and other sources for designs, checks on the work of the research and development team, and wraps up works, sketches, and master plans. 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. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In review of the entire record, the petitioner has failed to submit sufficient evidence to establish that the beneficiary had been employed by the foreign entity in a managerial or executive capacity, for one continuous year, within the three years preceding the filing of this petition.

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary's proposed U.S. duties will be in a managerial or executive capacity as defined at section 101(a)(44) of the Act. In addition, there is no evidence to establish that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad on completion of the temporary assignment in the United States pursuant to 8 C.F.R. 214.2(1)(3)(vii). As the appeal will be dismissed on other grounds, these issues need not be examined further.

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.