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U.S. Citizenship  
and Immigration  
Services

D7



FILE: SRC 02 211 50086 Office: TEXAS SERVICE CENTER Date: **MAR 30 2004**

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

The petitioner, [REDACTED] avers that it is the subsidiary of an Indian company, Patel General Stores. The petitioner states that it is a gas station and convenience store and makes small business investments. The U.S. entity was incorporated in the State of Georgia in October 1995. The petitioner now endeavors to hire the beneficiary as a new employee. Consequently, in June 2002, the U.S. entity filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee (L-1) for three years. The petitioner seeks to employ the beneficiary as the U.S. entity's president at an annual salary of \$36,000.

On August 14, 2002, the director concluded, however, that the beneficiary will not perform managerial or executive duties in the United States. Additionally, the director determined that the beneficiary had not performed managerial or executive duties for one continuous year during the three years prior to the filing of the petition. Consequently, the director denied the petition.

On appeal, the petitioner's counsel asserts that the beneficiary's proposed duties are primarily executive. Counsel does not address the issue of whether the beneficiary performed managerial or executive duties prior to the filing of the petition.

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.

The petitioner makes no claim that the beneficiary will serve in a managerial capacity; therefore, the only question that the AAO will address initially is whether the beneficiary will primarily work as an executive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner’s description of the beneficiary’s job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii).

On Form I-129, the petitioner stated: “[The] beneficiary will be the president [and] general manager of the US company, performing the same functions as those in India. He will also be examining potential investments within the US, i.e. additional small business purchases.” The beneficiary’s functions in India

included “oversee[ing] all operations, including personnel, marketing, inventory, and customer and vendor relations.”

A June 11, 2002 letter attached to Form I-129 asserted: “[The beneficiary] will also be scouting the area for other potential small business investments.” Additionally, the June 11 letter stated:

As President, [the beneficiary] will plan, develop, and establish policies and objectives of Patel General Stores in the United States. He will direct and coordinate business contracts in the entire operation of the company’s market, and develop other relevant policies and procedures implementing the overall objective of Patel General Stores.

The director determined that the above descriptions were inadequate to establish that the beneficiary would be performing executive or managerial duties. Consequently, on July 9, 2002, the director issued a request for evidence. Specifically, the director requested further details about the beneficiary’s proposed duties for the United States entity and current duties for the overseas entity. Additionally, the director asked the petitioner to describe the number of subordinate managers, supervisors, or other employees who will report directly to the beneficiary in the United States and who have been reporting to the beneficiary abroad. Finally, the director inquired about “who provides the product sales [and] services or produces the product of the business” in the United States and abroad.

On July 29, 2002, the petitioner responded, stating that the proposed U.S. duties will be to:

- Conduct all business accounting activities, banking, bill payment, salary, and insure funds availability;
- Market and sell products and services;
- Negotiate cost of goods and merchandise purchases to assure timely and economic resupply of merchandise;
- Oversee display and pricing of goods;
- Insure facilities comply with state and local safety and operational requirements;
- Provide overall supervision for all subordinates and daily store operation.

(Bullets added.) Also, the petitioner stated that the beneficiary will supervise two subordinate employees who “[p]rovide [r]outine [c]ustomer [s]ervice, maintain stock, and other activities as identified by management.”

The job duties depicted above establish that the beneficiary will devote a substantial portion of his time performing accounting duties, overseeing the display and pricing of goods, and insuring that facilities comply with safety requirements. Consequently, the beneficiary will primarily be performing tasks necessary to produce a product or provide a service. Moreover, another significant portion of the beneficiary’s duties will entail marketing and selling products and services as well as negotiating the cost of goods and merchandise purchases. Marketing duties, by definition, qualify as performing tasks necessary to provide a service or produce a product. 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).

Additionally, the duties listed above are too broad and nonspecific to convey an understanding of the beneficiary's proposed daily responsibilities. For example, the job description presents the proposed duties as marketing and selling products and services, negotiating the cost of goods and merchandise purchases, overseeing the display and pricing of goods, and insuring compliance with various laws. The petitioner did not, however, define the terms "products," "services," "goods," "merchandise purchases," "display and pricing of goods," or "compliance" with various laws.

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). In sum, the beneficiary's marketing and production-oriented duties and vaguely defined responsibilities preclude CIS from classifying the beneficiary as an executive.

The AAO will now turn to the issue of whether the beneficiary 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 and whether the prior year of employment abroad was in a managerial or executive position. *See* 8 C.F.R. §§ 214.2(l)(3)(iii) and (iv).

The petitioner's July 22, 2002 response to the July 9, 2002 request for evidence stated that the beneficiary's title abroad is "Owner/Manager" and that the beneficiary:

- Provides general supervision for all store and company activities;
- Coordinates all marketing and inventory activities;
- Manages the disbursement of all funds, including payroll, accounting, banking, and accounts payable and receivable;
- Establishes work schedules; and
- Ensures compliance with laws.

(Bullets added.) Furthermore, the response to the request for evidence depicted the beneficiary as supervising one employee, an assistant manager. The assistant manager:

- Performs customer service and other management activities;
- Maintains store cleanliness and safety standards;

- Prepares daily reports and bank deposits; and
- Provides overall supervision to subordinate employees.

(Bullets added.) In turn, the assistant manager supervises “two workers/associates [who] assist in stocking, sales, and store cleanliness, and complete duties as assigned by management.” Finally, the petitioner reported: “Sales and product service are provided by [the] [m]anager, [a]ssistant [m]anager, and workers/vendors.”

The job duties abroad establish that the beneficiary devotes the majority of his time to marketing, inventorying, performing accounting functions, creating work schedules, and ensuring compliance with laws. The beneficiary, therefore, spends the bulk of his time performing tasks necessary to produce a product or provide a service. As explained previously, 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, supra*.

In addition, the duties listed above are too vague and undefined to convey an understanding of the beneficiary’s daily responsibilities in India. For example, the job description does not define such terms as “provides general supervision,” “coordinates all marketing and inventory activities,” “manages” various accounting functions, “establishes work schedules,” or “ensures compliance with laws.” 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*. Likewise, 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*.

Furthermore, the petitioner has not demonstrated that the beneficiary primarily supervises 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).

The beneficiary supervises one employee, an assistant manager. The relevant question is whether the supervised position requires an advanced education. Section 101(a)(44)(A)(ii) of the Act. The response to the request for evidence provides no information about the required education for the subordinate position. Therefore, it is unclear whether the assistant manager performs tasks that require at least a baccalaureate degree. See e.g. *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).

The description of the assistant manager's duties is too general to convey an understanding of the position. When discussing the assistant manager's responsibilities duties, the petitioner does not define "customer service," "other management activities," "store cleanliness," "safety standards," "daily reports," or "overall supervision to subordinate employees." *Ikea US, Inc. v. INS, supra; Republic of Transkei v. INS, supra; Matter of Treasure Craft of California, supra.* Moreover, the assistant manager's tasks are very similar to the beneficiary's duties. For example, both employees perform accounting functions, ensure compliance with laws or standards, and provide general or overall supervision. Therefore, given the undefined job descriptions and unstated educational requirements and the similar tasks that the beneficiary and his immediate subordinate perform, it is unlikely that the assistant manager would be able to relieve the beneficiary of his nonqualifying responsibilities overseas.

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.

**ORDER:** The appeal is dismissed.