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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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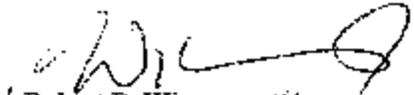
IN RE: Petitioner:
Beneficiary

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

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prevent clearly unwarranted
invasion of personal privacy**
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DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner claims to be engaged in the restaurant and hospitality business. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its executive manager. The director determined that the petitioner failed to submit sufficient evidence to establish the following: 1) that the foreign and U.S. entities are doing business; 2) that the beneficiary would be employed in a primarily managerial or executive capacity; and 3) the financial status of the U.S. entity.

On appeal, counsel disputes the director's findings and submits additional documentation in support thereof.

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 regulations at 8 C.F.R. § 214.2(l)(3) state 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.

Pursuant to 8 C.F.R. § 214.2(l)(14)(ii) 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 (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (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 U.S. petitioner states that it was established in the year 2000 and that it is a subsidiary of FATT International S.R.L., located in Italy. The initial petition was approved and was valid from December 18, 2000 to December 17, 2001, in order to open the new office. With this petition, filed on November 19, 2001, the petitioner seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of \$80,000.

The first two issues in this proceeding are whether the petitioner has established that it is doing business and whether its foreign counterpart is doing business.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H) state:

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.

In the initial petition the petitioner indicated that the foreign entity earned a gross annual income of \$1 million. However, the petitioner did not submit any documentation to support this claim. Consequently, on December 19, 2001, the director issued a notice requesting that additional evidence be submitted, including documentation that the foreign and U.S. entities are doing business. The director specified that such information could include purchase contracts, purchase orders, invoices, Bills of Lading, and financial statements for the foreign entity, and the petitioner's quarterly tax returns for 2001.

Although the petitioner submitted a number of documents regarding the foreign entity, the director's subsequent discussion in the denial properly pointed out each document's insufficiency for the purpose of establishing that it has been doing business. The director also pointed out the petitioner's failure to submit the requested Form 941 quarterly tax returns to show that the petitioner has been doing business. It is noted that failure to submit requested evidence which precludes a material line of inquiry, as the petitioner did in the instant case, shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14).

In the instant case, the petitioner did not comply with the director's request for copies of its quarterly tax returns. On appeal, the petitioner submits its annual tax return for the year 2000. The tax return indicates that the petitioner had gross receipts of \$15,724 in the year 2000, and that it earned \$4,858 in gross income. It had no employees and paid no wages or salaries.

The record as presently constituted is not persuasive in demonstrating that either the petitioner or its foreign counterpart has been engaged in the regular, systematic, and continuous provision of goods or services. The petitioner claims to be engaged in the restaurant business. While the evidence of record suggests that the petitioner plans to establish a restaurant chain, the same evidence also suggests that after one year of operation, the petitioner remains in the initial stages of development with no clear indication as to when it will actually begin doing business. While CIS recognizes the complexity of the petitioner's business, there are no legal exceptions to 8 C.F.R. § 214.2(l)(3)(v)(C), which allows the intended United States operation only one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. Although the petitioner has submitted a more recent balance sheet, as previously concluded by the director, an internally generated balance sheet is not a proper indicator for documenting business activities and therefore does not establish that the foreign entity has been doing business.

The other issue addressed by the director is whether the petitioner has established that the beneficiary's proposed duties would be of a managerial or executive nature.

Section 101(a)(44)(A) of the Immigration and Nationality Act ("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 the petition, the petitioner provided only a description of the beneficiary's duties abroad. A description of the beneficiary's proposed duties was not provided. Consequently, the director requested that the petitioner submit a comprehensive description of the beneficiary's proposed duties in the United States.

In response to that request, the petitioner submitted a statement in which the beneficiary's role in the U.S. entity was described as follows:

[The petitioner] can express that [the beneficiary] has been involved in the project from the beginning, as one of the directors in the development, research, marketing campaign, and financial researches. His position is 'Vice President' of the Corporation, and his strong skills in communication, financial and marketing have been considered necessary to the development of this business by the shareholders.

He will be in charge, in accordance with the other two representatives of the Board, of management decisions, financial matters, marketing campaign, hiring processes, and global supervision of the entire business entity.

In the denial, the director repeated the brief percentage breakdown the petitioner gave in response to the prior request for additional evidence. However, the breakdown noted by the director is in regard to the beneficiary's duties abroad, not his proposed duties in the United States. Nevertheless, the director's error does not alter the otherwise proper decision to deny the petition in light of the vague description of duties provided by the petitioner.

Despite counsel's contentions, 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 contain a comprehensive description of the beneficiary's duties, thereby making it impossible to determine what the beneficiary would be doing on a daily basis. Simply asserting that the beneficiary plays a significant role in the overall success of the petitioner's business venture is not sufficient to establish that the duties to be performed will be of a primarily managerial capacity. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel, or that he will be relieved from having to perform non-qualifying duties. Based on the evidence submitted, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity.

Although not explicitly addressed in the denial the petitioner failed to provide evidence of its ownership and control, and thereby failed to determine that it shares common ownership and control with its claimed foreign parent organization. The petitioner did not submit its share certificates or its stock transfer ledger. Furthermore, the petitioner was not clear as to which of the number of entities it named as belonging to the Ali Group actually owns and controls the petitioning entity. As previously stated, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). However, as the appeal will be dismissed on the grounds discussed above, this issue need not be further addressed.

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.