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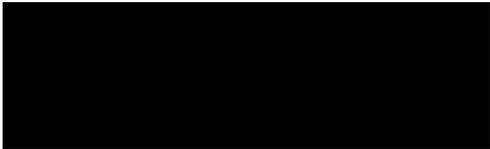


U.S. Citizenship
and Immigration
Services

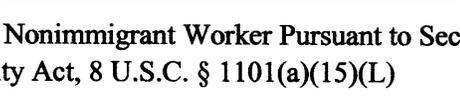
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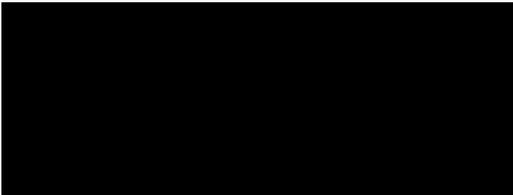


FILE: SRC 02 245 52450 Office: TEXAS SERVICE CENTER Date:

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 Director, Texas 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 is engaged in the business of operating a gas station and convenience store. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president and chief executive officer. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity. On appeal, counsel disputes the director's findings and submits a brief in support of his assertions.

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.

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 2001 and claims to be a subsidiary of Homeworld (PVT), Ltd., located in Pakistan. The initial petition was approved and was valid from August 14, 2001 to August 14, 2002, in order to open the new office. The petitioner seeks to extend the petition's validity and the beneficiary's stay for three years at an annual salary of \$30,000.

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

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 the following description of the beneficiary's job duties:

[The beneficiary] establishes the management control, assist [sic] with developing company goal [sic] and policies through the planning, organizing, directing and control of the company's management functions in the U.S. He has wide latitude in discretionary decision making and policy making decisions as related to the management, inventory control, sales and strategic planning for the company. [The beneficiary] is the senior level person in the U.S. organization responsible for planning, organizing, directing and controlling the company's administrative and management units. Importantly, he is responsible for the development and successful implementation of strategic objectives and plans in conjunction

with the parent company objectives. Therefore, [the beneficiary's] duties clearly relate to operation and policy making management.

On October 16, 2002, the director denied the petition noting that half of the petitioner's work force have managerial or executive titles. The director concluded that the petitioner failed to establish that the beneficiary will be employed in a managerial or executive capacity.

On appeal, counsel submits a statement noting that CIS has approved petitions where the petitioning entity is a one-person office, even though such petitions encounter heightened scrutiny due to their lack of a "well-defined management hierarchy." The petitioner in the instant case indicates that it is comprised of a gas station and convenience store. Therefore, its customers are patrons who use the gas station and/or purchase products from the convenience store. That being the case, it is unclear what counsel means when he states that the beneficiary "cultivates and maintains ties with the customers' management for business development purposes." Counsel fails to define this statement in the context of the petitioner's business. Although counsel claims that the petitioner "deals with professionals in fields such as accounting, finance, law, and business administration," he fails to specify the nature of this claimed relationship.

Counsel also asserts that the petitioner provided sufficient evidence to establish that the beneficiary operates as a function manager. However, a review of the description of the beneficiary's duties indicates that the petitioner merely paraphrased the regulatory definition of "managerial capacity" without providing a list of the beneficiary's actual daily activities. 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). Furthermore, counsel's appellate briefs (one submitted at the time of the appeal and the other submitted several months later) are little more than summaries of legal definitions and general CIS policies. Neither brief contains a firm analysis of the petitioner's specific facts in light of the stated definitions and policies. Counsel merely asserts that the petitioner provided sufficient evidence to establish the beneficiary's seniority within the organizational hierarchy and his discretionary authority with regards to the petitioner's policies and its day-to-day operation. However, he neither refers to nor discusses any specific piece of the submitted evidence.

Finally, counsel asserts that "[i]n the interests of fairness and justice, [CIS] should have issued" either a notice requesting additional evidence or a notice of intent to deny the petition. Although CIS could have requested that the petitioner submit additional evidence regarding the beneficiary's duties, there is no regulation or legal precedent that makes a request for additional evidence mandatory where the petitioner has submitted the required initial evidence, as is the case in the instant matter. *See* 8 C.F.R. § 103.2(a)(8). Furthermore, the director's adverse decision was not based on evidence outside of the record. To the contrary, the adverse decision in the instant matter was based entirely on information submitted by the petitioner. Therefore, the director's decision to issue a denial without first issuing a notice of intent to deny the petition is not at odds with the regulation at 8 C.F.R. § 214.2(l)(8).

On review, 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 beneficiary is the owner and operator of a gas station and convenience store. The petitioner's organizational chart shows that it claims to employ a manager and four cashiers, one of whom also carries the title of assistant manager. Based on this information, it cannot be concluded that the petitioner has reached a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies

constitute significant components of the duties performed on a day-to-day basis. Although the petitioner implies, by virtue of its organizational chart, that the beneficiary's subordinate is a manager who supervises the petitioner's employees while the beneficiary focuses on managerial or executive duties, this claim is not supported by the evidence of record. Namely, the beneficiary's description of duties is little more than a paraphrased version of the regulatory definition of "executive capacity." Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The description of the beneficiary's duties is too vague to convey a true understanding of what the beneficiary has been and will be doing on a daily basis. Furthermore, even though the petitioner indicates that the beneficiary's immediate subordinate is a manager, the petitioner has not provided any indication of that person's job duties.

Despite counsel's assertions, the record does not establish that a majority of the beneficiary's duties have been or will be primarily directing the management of the organization. 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 performing non-qualifying duties. Nor does the record demonstrate that the beneficiary primarily manages an essential function of the organization. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

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.