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**U.S. Citizenship  
and Immigration  
Services**



*[Handwritten signature]*

FILE: LIN 02 273 51334 Office: NEBRASKA SERVICE CENTER Date: **OCT 01 2004**

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 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.

*[Handwritten signature]*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska 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 filed this nonimmigrant petition seeking to employ the beneficiary in the position of chief operating officer in the capacity of an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Michigan and is doing business as a beauty salon. The petitioner states that it is an affiliate of Adib Lahoud Hair Salon, located in Lebanon. The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary was employed abroad in a managerial or executive capacity. The director also determined that the petitioner would not support the beneficiary in a managerial or executive capacity one year within the petition's approval or that the beneficiary would be transferred abroad upon completing his assignment in the United States.

On appeal, counsel disputes the director's findings.

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.

8 C.F.R. § 214.2(l)(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 (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.

The regulations at 8 C.F.R. § 214.2(1)(3)(v) state that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- A) Sufficient physical premises to house the new office have been secured;
- B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

The first issue in this proceeding is whether the beneficiary's position abroad was of a managerial or executive capacity.

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.

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 the supplement to Form I-129, the petitioner stated that during his employment abroad the beneficiary managed a hair salon, which included hiring employees, setting company policies, overseeing the business's financial operations, and designing and implement marketing strategy. In regard to the beneficiary's proposed duties in the United States, the petitioner stated that the beneficiary would operate a beauty salon, which would include hiring employees, setting business policies, overseeing the company's accounting and finances, and creating a marketing strategy to expand the business operation.

On September 3, 2002, the director issued a request for additional evidence. The petitioner was asked to submit information about the foreign entity's organizational structure, including the number of employees, their job titles and job duties. The petitioner was instructed to provide the same information about its own proposed organizational structure. In addition, the director requested evidence to indicate whether the petitioner will be able to support a managerial or executive position within one year of the petition's approval.

The petitioner's response included a statement from counsel claiming that the foreign entity currently has one supervisor and four employees and that the U.S. business will initially have five beauty operators and one cashier/assistant. Counsel provided no information about the job titles and job duties of the petitioner's employees, or the beneficiary's position with the organizational hierarchy of the overseas entity. Counsel explained that the beneficiary's proposed duties in the United States would include "providing guidance to the beauty operators in his salon with regard to current hairstyles and hair treatment/coloring methods. He will create publicity events to highlight his styling techniques and create a presence in the community." No further information was provided regarding the beneficiary's duties, either abroad or in the United States.

On December 5, 2002, the director denied the petition noting the petitioner's failure to provide information about the overseas entity's employees. The director stated that the beneficiary is a hair stylist whose position overseas consists of running a beauty salon. The director concluded that the beneficiary's overseas position does not fall under the statutory definition of managerial capacity or executive capacity.

On appeal, counsel asserts that the director failed to acknowledge the beneficiary's "skill and artistic experience," as well as his "stylistic leadership and technical experience" in denying the petition. Counsel's assertion is without merit and without regard to the regulatory requirements for the immigration benefit sought. Contrary to counsel's misconception, a beneficiary's skill and technical experience are not the key factors considered by Citizenship and Immigration Services (CIS) in determining eligibility for classification as an L-1A intracompany transferee. 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). Specifics are clearly 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 the instant case, the petitioner failed to provide any details regarding the beneficiary's duties overseas. The information that was provided strongly suggests that, at the very least, the beneficiary has been and would be supervising hair dressers at a beauty salon. While the petitioner has not provided descriptions of their specific job duties, there is no indication that a hair dresser can be considered professional, supervisory, or managerial. Thus, even if the beneficiary does not perform the duties of a hair stylist, the record indicates that he spends a majority of his time supervising non-professional employees. For this initial reason the petition cannot be approved.

The second issue in this proceeding is whether the petitioner would support a managerial or executive position one year within the petition's approval.

In the denial, the director determined that the petitioner would not "have the financial ability within one year to support a staff sufficient to relieve the beneficiary from performing non-qualifying duties." Although the director was correct in determining that the petitioner would not support a managerial or executive position at the end of the beneficiary's first year of employment in the United States, the director's emphasis on the petitioner's current financial status was misplaced. In making the ultimate determination regarding the petitioner's ability to support a managerial or executive employee, the director must consider the beneficiary's proposed job duties. In the instant case, the petitioner's description of the beneficiary's proposed job duties, much like the beneficiary's job duties abroad, strongly suggests that the beneficiary's job would consist of supervising non-professional employees. There is no indication that after one year of operation the petitioner would have the beneficiary performing duties that are significantly different than those he would perform during the petitioner's first year of operation. For this additional reason, the petition cannot be approved.

The final issue in this proceeding is whether the petitioner established that the beneficiary would be transferred abroad upon completing the temporary assignment in the United States.

On appeal, counsel asserts that the beneficiary's "ongoing overseas business interests demand that he divide his time between the United States and Lebanon." However, the petitioner has failed to provide any evidence that the beneficiary's business abroad is ongoing, as claimed. 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). Furthermore, even if the overseas business is ongoing, counsel's statement suggests that the petitioner would continue to need the beneficiary's services beyond the beneficiary's initial stay in the United States. The petitioner also failed to provide any information as to how the U.S. business would continue without the beneficiary's physical

presence. Therefore, the AAO concludes that the petitioner failed to establish that the beneficiary would be transferred abroad upon completing his assignment in the United States. For this final reason this petition cannot be approved.

Beyond the decision of the director, the record does not contain sufficient evidence to establish that the foreign and U.S. entities have a qualifying relationship. See 8 C.F.R. § 214.2(l)(1)(ii)(G). The regulation 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 immigrant visa classification. *Matter of Church of Scientology International*, 19 I&N Dec. 593 (BIA 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986)(in nonimmigrant visa proceedings); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982)(in nonimmigrant visa proceedings). In 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* at 595. In the instant matter, the petitioner has not submitted any evidence establishing that the beneficiary owns the foreign entity as claim. Therefore, the AAO cannot conclude that the U.S. and foreign entities are similarly owned and controlled. It is noted that an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). As such, due to the additional grounds discussed in this paragraph, this petition cannot 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.