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U.S. Citizenship  
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Services

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File: SRC 03 200 54775 Office: TEXAS SERVICE CENTER Date: **APR 04 2005**

IN RE: Petitioner:  
Beneficiary:



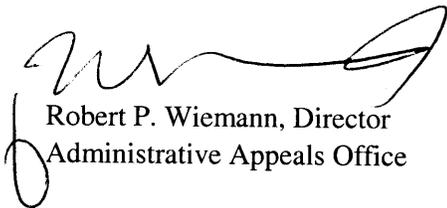
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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 filed this nonimmigrant petition seeking to employ the beneficiary in the position of administrative manager/director as an L-1B nonimmigrant intracompany transferee with specialized knowledge 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 primarily engaged in computer and electronics sales and provision of information technology services. The petitioner claims that it recently diversified its business and also sells Shona art. The petitioner claims to be a subsidiary of Idata Systems Incorporated (Pvt.) Limited, located in Harare, Zimbabwe. 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: (1) that the beneficiary has been employed abroad in a position requiring specialized knowledge; (2) that the beneficiary will be employed in the United States in a position requiring specialized knowledge; and (3) that there is a qualifying relationship between the United States company and the beneficiary's foreign employer.

On appeal, the petitioner asserts that the director mischaracterized the nature of the position by suggesting that the beneficiary is a "mere manager." The petitioner also notes that the director failed to take into account the beneficiary's responsibilities for managing the marketing of Shona art in the U.S. and the requisite specialized knowledge required for this position.

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(l)(3) further 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; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in a capacity that involves specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

On the I-129 Petition and on the L Supplement to Form I-129, the petitioner indicated that it was seeking to employ the beneficiary in L-1B status. The petitioner described the beneficiary's responsibilities as follows on the L Supplement:

Management in accordance with company policy, recruitment of employees in respect to the company's requirements, manage investments and seek further markets. Taking over most responsibilities from the company.

In its supporting letter dated June 30, 2003, the petitioner notes that the beneficiary will report directly to the company president and "recruit, train and oversee the activities of four professional employees." The petitioner also submitted a separate statement listing the following duties to be performed by the beneficiary in the United States:

- 1) Sit on the Board of Directors and contribute to the formulation of Company Policies
- 2) Oversee implementation of Company Policies at managerial level
- 3) Recruit and administer employees
- 4) Select office amenities providers
- 5) Represent and sign sales and maintenance contracts
- 6) Address all legal matters pertaining to the company
- 7) Sign dealership agreements

- 8) Management of the company funds, monitoring and reconciliation of the bank accounts
- 9) Investigate investment markets and make investment decisions in consultation with the Board Chairman
- 10) Report business activities to the Company President.

According to the company policy these duties constitute a managerial nature. The hierarchy of the company and the reporting structure show that the position to be undertaken by [the beneficiary] is managerial.

In its June 30, 2003 letter, the petitioner states that the beneficiary has been employed by its Zimbabwean parent company since May 1997, where she has been responsible for establishing and managing a branch office in Bulawayo, Zimbabwe. Specifically, the petitioner describes the beneficiary's current duties as follows:

As Branch Manager she plays the key role of ensuring unparalleled customer technical solution provision. She leads, trains, recruits and imparts quality administrative skills reporting directly to the Managing Director and oversees seven employees who include two engineers and three technicians.

On July 25, 2003, the director requested additional evidence. In response to the request, counsel for the petitioner submitted: a stock certificate indicating that the Zimbabwe company owns 1,000 shares of the petitioner; photographs of the U.S. and foreign companies' offices; a lease agreement for the foreign company's Bulawayo, Zimbabwe branch office; various documents offered as evidence that the parent company is doing business; contracts signed by the petitioner; the petitioner's IRS Form 1120, U.S. Corporation Income Tax Return for 2002; Form 941, Employer's Quarterly Federal Tax Return for the quarter ending March 31, 2001 (one page only); a letter from the foreign company's chairman attesting to the beneficiary's specialized knowledge; documentation regarding the foreign company's employment of two engineers in its Bulawayo, Zimbabwe office; and a photograph of several sculptures claimed to be "art works available at Idata." Counsel claims that an inventory list is submitted, but the record does not contain such a list.

In his letter dated October 20, 2003, counsel for the petitioner states that the purpose of the beneficiary's transfer is "to strengthen the viability of [the petitioner] in the sluggish IT market." Counsel asserts that the beneficiary will manage an international IT team comprised of two engineers employed in Zimbabwe, as well as the technical director, engineer, and two technicians who work in the U.S. office. Counsel further asserts that the beneficiary will perform the following responsibilities:

The manager delegates work to the international IT teams, supervises their work, sets standards for their work, and establishes guidelines for each assignment given to the teams. She coordinates the work of each team to ensure that all deadlines are met.

The manager [is] also responsible for supervising the work of the financial directors and sales persons to be sure the offices run smoothly.

The manager will have day-to-day discretionary authority for all Idata endeavors. She will supervise the work of all employees and evaluate all work according to the standard of quality, profitability and customer satisfaction which the company has long upheld. She will fire and replace any employees who cannot maintain the company work ethic.

[The beneficiary] as manager of [the petitioner] will also be responsible for the marketing of all Shona art imported to the United States from Idata Zimbabwe.

The Chairman of the foreign entity also submitted a letter, dated September 28, 2003, which described the beneficiary's experience as follows:

She has done extensive traveling to countries such as Ireland, Belgium, France, USA, South Africa, United Kingdom, Angola, Portugal, Germany and the Netherlands on business trips, meeting suppliers, purchasing supplies and shipping. Gaining product knowledge and pricing for the Zimbabwe market. Vis a vis these travels have also enabled her to be familiar with foreign suppliers, markets and traders. This has given her special knowledge on currency exchanges, customs and exercise handling, import and export regulations, locations of important point of contacts in different worldwide cities and other general knowledge acquired during business interactions. This is also where her knowledge of several languages gives her an advantage in international transactions.

Also indispensable is her ability to relate to the company's business culture. The company focus is based on the right personal [sic] to carry out specific company objectives. This requires a prior knowledge of the company personal [sic], products and related customers and suppliers.

In the company's diversification the gallery sales of Shona sculptures are set to improve. We hope to develop markets for these unique products through the guidance of an individual who knows both the products and markets. Inevitably this person has to be well vested with Shona sculptures. Having grown up in Zimbabwe and done some sculpture work like any average Zimbabwean, [the beneficiary] is qualified to handle the development of a sales team and the markets for Shona sculptures.

On November 10, 2003, the director denied the petition, stating that the petitioner had failed to establish the beneficiary's eligibility for the classification of an L-1B specialized knowledge employee. The director determined that the petitioner had not furnish evidence sufficient to establish that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in her field, and noted that "mere familiarity with an organization's product or services, such as knowledge with its nomenclature or procedures, does not constitute special knowledge under section 214(c)(2)(B) of the Immigration and Nationality Act." In addition, the director found insufficient evidence of a relationship with the foreign entity. Specifically, the director noted that the petitioner had failed to provide a copy of its stock register as requested, and that it had provided an incomplete Form 1120 with a blank Schedule K.

On appeal, the petitioner asserts that the director mischaracterized the nature of the position by suggesting that the beneficiary is a “mere manager” and claims that the position is executive level. The petitioner also notes that it previously tried to recruit for the position but has not located a suitable candidate due to the petitioner’s location in a rural town. The petitioner submits a copy of an employment classified ad for the position offered. In addition, the petitioner suggests that the director overlooked “the element of the gallery selling Shona art,” stating “at this point [the beneficiary] who has complete knowledge of this expensive art is the only one suitable to manage the marketing and train employees on the product.”

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered U.S. position. In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner’s description of the job duties. *See* 8.C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge.

In the initial petition, the petitioner neither asserted nor provided evidence that the beneficiary had acquired specialized knowledge of the organization’s product, service, research, equipment, techniques, management or other interests and its application in international markets, or that she possessed an advanced knowledge or expertise in the company’s processes and procedures. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D). Rather, the petitioner seemed to be attempting to establish the beneficiary’s credentials as a manager who oversees a branch office, supervises personnel, and will be performing similar general management duties in the United States.

As noted above, the petitioner clearly indicated that it was seeking L-1B status on behalf of the beneficiary on Form I-129. However, it has not articulated any basis to the claim that the beneficiary has been or will be employed in a capacity requiring specialized knowledge. Other than submitting a general description of the beneficiary’s managerial and administrative duties, the petitioner has not identified any aspect of the beneficiary’s position which involves special knowledge of the petitioning organization’s product, service, research, equipment, techniques, management or other interests. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary’s position that would differentiate that employment from the position of administrative manager at other employers within the industry. 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. Com. 1972). Specifics are clearly an important indication of whether a beneficiary’s duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d. Cir. 1990).

When asked to provide additional information regarding the beneficiary’s specialized knowledge qualifications, the petitioner only provided a statement from the Chairman of the foreign company attesting to the beneficiary’s numerous travels abroad and “special knowledge on currency exchanges, customs and exercise [sic] handling, import and export regulations, locations of important point of contacts in different worldwide cities and other general knowledge acquired during business transactions.” The Chairman also noted the beneficiary’s “ability to relate to the company’s business culture . . . which requires a prior knowledge of the company personal [sic], products and related customers and suppliers.” Contrary to the petitioner’s assertions, this general business knowledge, even when combined with familiarity with the petitioner’s business, does not rise to the level of

specialized knowledge as defined in the regulations. Further, the petitioner has stated that it has been attempting to recruit a U.S. worker to fill the role offered to the beneficiary. The petitioner further notes it believes it could fill the position if the petitioner were not located in such a rural area and/or if the petitioner could afford to offer competitive compensation for relocation of a qualified individual. This statement from the petitioner strongly suggests that no previous knowledge of the company's "business culture," products, customers and suppliers is in fact required to perform the duties of the position. Accordingly, the AAO must concur with the director that there is no evidence that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field.

On appeal, the petitioner asserts that the director failed to take into account the beneficiary's role in managing the marketing and gallery sales of Shona art. However, the AAO notes that the petitioner expanded the beneficiary's duties to include these marketing duties only after receiving a request for additional evidence of the beneficiary's specialized knowledge qualifications. The initial description of the beneficiary's duties made no reference to such duties and focused only on the managerial aspects of her current and proposed employment.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, the petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits the requested classification. *See Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). Therefore, the director did not need to consider the beneficiary's new Shona art marketing duties added in response to the request for evidence. Further, even if these duties had been included in the initial petition, the AAO notes that there is no documentary evidence that the petitioner actually imports and sells Shona art, nor is there any evidence that the petitioner possesses any specialized knowledge of this art form. The only evidence presented is a statement that the beneficiary has knowledge of the art typical of the "average Zimbabwean." 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).

Based on the evidence presented, it is concluded that the beneficiary has not been employed abroad and would not be employed in the United States in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner has submitted sufficient evidence of a qualifying relationship between the foreign company and the U.S. company. The record contains a single stock certificate, marked "Number 1" which indicates issuance of 1,000 shares of stock at a par value of \$1.00 to the petitioner's claimed Zimbabwe parent company on April 13, 2001. The stock certificate indicates that the petitioner is authorized to issue 100,000 shares. On appeal, the petitioner claims that it misunderstood the director's request for the stock register and submits for the first time a single page from the company's stock register. The document indicates that stock certificate number two for 100,000 shares was issued to the claimed parent company on April 30, 2002. However, the stock register does not reference the stock certificate that was previously issued, nor does it account for the fact that the company has now issued

101,000 shares when it is only authorized to issue 100,000 shares. Without a copy of stock certificate "Number 2," the AAO cannot determine if there has been a clerical error, or if the company has actually been authorized to issue additional stock. In addition, the director noted in her decision that the petitioner did not submit a full copy of its 2002 Form 1120, specifically remarking that Schedule K was left blank. The director correctly noted that if the petitioner were 100 percent owned by a foreign corporation, this information would be included on Schedule K. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Accordingly, the AAO concurs with the director's determine that the petitioner has not provided sufficient evidence to establish that the required qualifying relationship with the foreign entity. For this additional reason, the petition must be denied.

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.