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U.S. Department of Homeland Security  
20 Mass. Ave, N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

D7



File: SRC 02 255 54735 Office: TEXAS SERVICE CENTER Date: AUG 02 2005

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)

IN 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the petition for a nonimmigrant visa. A motion to reopen and reconsider was granted by the director, and the previous decision was affirmed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.<sup>1</sup>

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president and director as 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 Texas that claims to be engaged in a number of business endeavors, including retail, import and export services, and computer consultation. The petitioner claims that it is the subsidiary of [REDACTED], located in Karachi, Pakistan. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay for an additional three years.

The director denied the petition concluding that the petitioner did not establish that (1) the beneficiary has been and will continue to be employed in the United States in a primarily managerial or executive capacity; and (2) the petitioner had been doing business as defined by the regulations.

The petitioner filed an appeal in response to the denial. On the Form I-290B, counsel for the petitioner incorporated by reference the evidence submitted with the petition, in response to the request for evidence, and with the motion to reopen and reconsider. Counsel asserts that contrary to the director's findings, the petitioner had in fact been doing business as required and that the beneficiary had been functioning in a capacity that was primarily managerial or executive.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. In addition, 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.

The regulation at 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.

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<sup>1</sup> The AAO notes that the director incorrectly treated the petitioner's appeal, dated July 21, 2003, as a second motion to reopen and reconsider. The director's decision dated August 23, 2003 is therefore withdrawn.

- (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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, 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 first issue in this matter is whether the beneficiary has been and will continue to be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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 initial petition, the petitioner submitted a letter dated August 20, 2002 detailing the nature of the beneficiary's duties. Specifically, the petitioner stated:

As President/Director, [the petitioner] has established a firm foundation on building a U.S. subsidiary. We have benefitted [sic] greatly from [the beneficiary's] astute management capabilities and leadership expertise. Through his efforts, we will soon be able to increase staffing levels and provide additional jobs and economic benefit for our community.

\* \* \*

At [the petitioner], [the beneficiary] will maintain absolute authority to hire, discharge, direct and supervise managerial personnel who will in turn perform the same functions on lower echelon staff members.

On September 9, 2002, the director requested additional evidence pertaining to the nature of the beneficiary's position. The director requested an explanation as to how the beneficiary would not engage in the day-to-day operations of the business, and asked the petitioner to submit a statement with regard to the duties and educational backgrounds of any other employees of the petitioner. In addition, the director requested copies of the petitioner's Employer's State Quarterly Tax Return with all attachments for the

previous two quarters, as well as copies of the petitioner's Form 940 EZ, Employer's Annual Federal Unemployment Tax Return.

In a letter dated November 18, 2002, the petitioner submitted a detailed response to the points raised by the director. With respect to the beneficiary's duties and how he will not engage in the day-to-day operations of the business, the petitioner stated:

The vision of the company is to operate as a holding company. Thus the company would acquire promising business ventures which are fundamentally good business propositions but may not be doing well on account of mismanagement or lack of resources. [The petitioner] would acquire these businesses and bring about improvements through infusion of better management and professionalism. Once the turnaround is complete, the company would spin off the unit at profit and move on to other projects. Under this scheme of things, it is not practical for the President to indulge him self in the day to day operations of the company. The only way for [the] company to flourish is for the President to utilize his business acumen in identifying oopportunities [sic] of acquisitions and assess these for suitable fit.

The petitioner also stated that the petitioner employed three additional persons in addition to the beneficiary. These persons were identified as follows:

Mr. [REDACTED] is the Vice President of the company. He is responsible for coordinating the affairs in line with the agreed objectives. He follows up on developments and report[s] the progress to the President. In the absence of the President, Mr. [REDACTED] meets with key customers, suppliers and industry associates. He is responsible for complying with reporting requirements of different agencies in a timely fashion. Mr. [REDACTED] has done Masters in Science.

Mr. [REDACTED] is the Retail Marketing Manager of the company. He is responsible for overseeing the routine operations of any acquired entity. He is authorized to hire temporary and part time workers. He coordinates dealings with approved suppliers. He reports to the Vice President for any problem. Mr. [REDACTED] has completed Bachelors degree.

Mr. [REDACTED] is the Business Manager. He monitors generation and utilization of funds. He deals with the financial institutions and strive[s] for optimizing the profitability. He coordinates with outside agencies for getting accounting support. Mr. [REDACTED] has associate degree.

Finally, the petitioner submitted the requested copies of its state quarterly tax returns for the quarters ending September 30, 2002 and June 30, 2002, and annual federal tax return for 2001.

On December 11, 2002, the director denied the petition. The director concluded that the evidence in the record was insufficient to warrant a finding that the beneficiary had been and would continue to be functioning in a capacity that was primarily managerial or executive. The director did not articulate the

basis for this decision. Counsel for the petitioner filed a motion to reopen and reconsider, which was granted by the director. In the motion, counsel asserted that it had complied with the director's request for additional evidence, and provided a response to the director's request for an explanation as to how the beneficiary would refrain from performing the day-to-day operations of the business. No new evidence with regard to this issue was submitted, and the director subsequently affirmed her previous decision.

On appeal, counsel for the petitioner asserts that the beneficiary does in fact meet the requirements for both managerial or executive capacity. With regard to the beneficiary's qualifications, counsel asserts that he immediately began market research upon arrival in the United States, and hired two additional employees in early 2002. Counsel also discussed several contract negotiations which the beneficiary orchestrated.

Upon review, counsel's assertions are not persuasive. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. See 8 C.F.R. § 103.3(a)(1)(i). Upon review of the director's decision, the AAO finds that the reasons given for the denial are conclusory with few specific references to the evidence entered into the record to establish the beneficiary's employment in a managerial or executive capacity. As the AAO's review is conducted on a *de novo* basis, the AAO will herein address the petitioner's evidence and eligibility. See *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The burden is on the petitioner to specifically state whether the beneficiary is primarily employed in a managerial or executive capacity.

The description of the beneficiary's duties in this matter is vague and non-specific. In the petitioner's letter of August 20, 2002, the only description provided of the beneficiary's intended duties is the statement that concludes the beneficiary will have "absolute authority to hire, discharge, direct and supervise managerial personnel." This vague description of duties, and counsel's assertions on motion and on appeal, are the only evidence hinting at the true duties of the beneficiary. 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.).

In this case, reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. On appeal, counsel indicates that the beneficiary participated in contract negotiation and market research. There are two problems with these statements. First, it would

appear that the beneficiary is actively engaged in the tasks necessary to promote the services of the petitioner. An employee who primarily performs the tasks necessary to produce a product or to 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).

Second, while these statements certainly provide a more definitive idea of the beneficiary's role in the petitioner's operations, it is still unclear what the beneficiary and three other employees do on a daily basis, particularly since the petitioner claimed to have no income for 2001 and has submitted no evidence of doing business. In this matter, the proposed position of the beneficiary is president of a company that employs three other employees with managerial titles. As will be discussed below, the nature of the company's business activities has not been adequately or consistently described. As a result of the abbreviated description of the beneficiary's actual duties, the petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. See section 101(a)(44)(A)(ii) of the Act. Furthermore, regardless of the beneficiary's position title, the record is not persuasive that the beneficiary will function at a senior level within an organizational hierarchy. Even though the petitioner contends that the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements. Based on the limited documentation furnished, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity.

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 petitioner indicates that it plans to hire additional employees and acquire additional contracts in the future. However, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation 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. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. The petitioner at no time provided a clear description of the duties to be performed by the beneficiary as required by the regulations. Although counsel asserts that such specifics were never requested by the director, this assertion does not excuse the petitioner's failure to submit such evidence. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The regulations clearly set forth the requirements for the extension of a new office petition. See 8 C.F.R. § 214.2(l)(14)(ii). The petitioner has failed to satisfy those requirements.

For the reasons set forth above, the petitioner has failed to establish that the beneficiary's duties are primarily managerial or executive in nature. For this reason, the petition may not be approved.

The second issue in this matter is whether the petitioner has been doing business as required by the regulations for the previous year. The regulation at 8 C.F.R. §214.2(l)(1)(ii)(H) defines the term "doing business" as "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 this matter, the petitioner initially claimed on Form I-129 that the company is engaged in "Retail, Import, Export, [and] Investment Services." No documentation, such as invoices or contracts, were submitted with the initial petition to support the petitioner's claim.

In the request for evidence dated September 9, 2002, the director requested a copy of the petitioner's 2001 Form 1120, U.S. Corporation Income Tax Return, as well as proof that the petitioner was registered to do business and photos of the business location. The petitioner complied with the director's request; however, the director found the evidence in the record to be insufficient to warrant a finding that the petitioner had in fact been doing business, and denied the petition.

In the petitioner's motion to reopen and reconsider, counsel discusses various contractual agreements executed on behalf of the petitioner by the beneficiary which were not previously identified. Specifically, counsel contended that the petitioner had contracted with [REDACTED], to perform consulting services, and that another contract for "services" had been executed between the petitioner and [REDACTED]. The director found this new evidence to be insufficient to overcome the basis for the denial, and affirmed the previous decision. Counsel reasserts these arguments on appeal.

On review of the evidence submitted, the AAO concludes that the petitioner failed to demonstrate that it had been doing business during the previous year. With the initial petition, no evidence identifying the true nature of the petitioner's business practices was submitted, although the petitioner indicated that it is engaged in retail, import, export, and investment activities. In a November 18, 2002 letter submitted in response to the director's request for evidence, the petitioner indicated that the company endeavors to operate a holding company. The petitioner's 2001 Form 1120, U.S. Corporation Income Tax Return, which was submitted in response to the request for evidence, further added to the confusion. Specifically, the tax return indicated that the petitioner was engaged in computer consulting services, seriously undermining the petitioner's claim that it was acting as a holding company. On appeal, the petitioner claims that the company has been providing business analysis and information technology services and submits a business plan indicating that the company operates a computer consulting and computer parts sales outlet. 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Regardless of the petitioner's true business interests, the record contains no evidence confirming that the petitioner has been engaged in the "regular, systematic, and continuous provision of goods and/or services" as required by the definitions. Prior to adjudication, the petitioner submitted copies of bank statements and utility bills. These documents, however, suggest the presence of the petitioner in the United States, but fail to establish that it has been engaged in the provision of goods and services. Although counsel asserts that contracts to provide services have been executed, no invoices or receipts for payments received have been

provided, which would establish that such services were actually provided in accordance with those contracts. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on this limited information, it is clear that the petitioner was not doing business as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). The record lacks any explanation or documentation regarding other activities engaged in by the petitioner to promote its business during the first year of operations. Furthermore, the petitioner does not acknowledge the discrepancy in the record with regard to its claimed business activities. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of a new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) require the petitioner to demonstrate that it has been doing business for the previous year. In the present matter, the evidence submitted at the time of filing confirmed that the petitioner had not been conducting business as required. For this additional 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. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.