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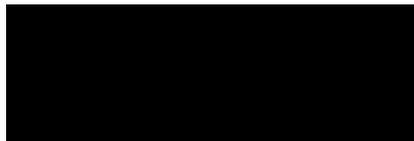


U.S. Citizenship  
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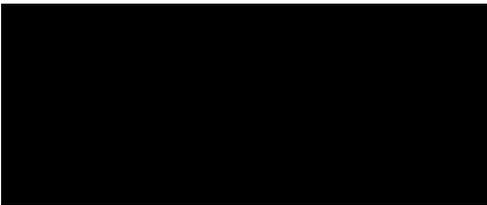


FILE: SRC 03 093 51319 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

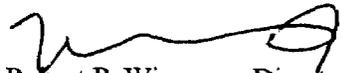
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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 nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision will be remanded for entry of a new decision.

According to the evidence contained in the record the petitioner was established in 2002, and is described as a retail trade and investment business. The petitioner claims to be a subsidiary of [REDACTED] located in Karachi, Pakistan. The petitioner declares an estimated two employees and an estimated gross annual income of \$180,000.00. It seeks to employ the beneficiary temporarily in the United States as the president of its new office for three years, at an annual salary of \$35,000.00.

The director determined that the petitioner failed to establish that the beneficiary had been employed by the foreign entity primarily in a managerial or executive capacity.

On appeal, counsel disagrees with the director's determination and asserts that the beneficiary has been employed by the foreign entity primarily in a managerial or executive capacity.

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)(1)(ii) states, in part:

*Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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 (1)(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 with 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 serves 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(1)(3)(v) states 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 issue in this proceeding is whether the petitioner has submitted sufficient evidence to show that the beneficiary has been employed by the foreign entity primarily in 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 petition the petitioner described the beneficiary's job duties with the foreign entity as:

Directed and coordinated activities of the organization and formulated and administered company policies: In consultation with the management; developed long range goals and objectives of the company. Directed and coordinated activities of managers and employees in the production, operations, purchasing and marketing departments for which responsibility was delegated to further attainment of goals and objectives. Reviewed and analyzed activities, costs, operations, and forecast data to determine progress toward stated goals and objectives. Discussed with management and employees to review achievements and discuss required changes in goals or objectives of the company.

In a letter of support, dated January 18, 2003, the beneficiary stated that as owner and president of the foreign entity, she has "managed and steered the business to new heights."

The petitioner submitted copies of the foreign entity's Business Resolution appointing the beneficiary as president of the U.S. entity; Import and Export certificates from the government of Pakistan; a membership certificate from the Pakistan [REDACTED] Income Tax Forms; bank statements from the [REDACTED]; Sales Tax Returns for 2000 and 2001; Import Bill of Entry; and commercial invoices and a bill of lading.

The director determined that the evidence submitted was insufficient to determine the beneficiary's employment capacity with the foreign entity, and thereafter requested that the petitioner submit evidence that the beneficiary was employed by the foreign entity in a managerial or executive capacity.

In response to the director's request for additional evidence, the petitioner stated in part: "[the beneficiary] is the principal shareholder and president of [the foreign entity]. . . [the beneficiary] was engaged in an executive capacity . . . from 1996. She is compensated by share of profits. By virtue of her ownership interests, [the beneficiary] performed in an executive capacity for the parent company."

The director determined in denying the petition that the evidence submitted was insufficient to establish that the beneficiary had been employed by the foreign entity primarily in a managerial or executive capacity. The director stated, "Ownership of 9-10% of a company's stock does not establish . . . that the beneficiary was employed in an executive capacity. There is no evidence that the beneficiary was actually employed by the foreign entity other than receiving profit shares."

On appeal, counsel disagrees with the director's decision and asserts that the director misinterpreted the documents submitted in that the "[redacted]" not the "[redacted]" company documents should have been considered in rendering her decision. Counsel further asserts that ownership of 9-10 percent of the company's stock refers to "[redacted]" and not "[redacted]"

In review of the evidence submitted and the arguments of counsel, it appears that the director, in rendering her decision, reviewed documents pertaining to the "[redacted]" which the record shows is not the foreign entity to be examined. The petitioner is asserting that the "[redacted]" employed the beneficiary previously, so documents pertaining to the "[redacted]" should have been examined in determining whether the beneficiary qualifies for the benefit sought. Therefore, the director's decision is withdrawn. The matter will be remanded to the director for issuance of a new decision. The director may request any additional evidence deemed necessary to assist her with the determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The matter is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.