



U.S. Citizenship
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FILE: WAC 02 110 53910 Office: CALIFORNIA SERVICE CENTER Date: JUL 14 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The acting director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the case will be remanded for further consideration and action.

The petitioner is described as an importer, repairer, and retailer of Persian rugs. It seeks to employ the beneficiary in the United States as its production manager. The petitioner states that it is a wholly-owned subsidiary of the foreign entity, which is located in Iran. The director concluded that the beneficiary is a native of Iran who would be coming to the United States to work as an employee of an Iranian business entity. Therefore, in accordance with the Executive Orders and regulations relating to Iranian economic sanctions, the director concluded that she is not authorized to carry out activities in the United States as an intra-company transferee.

On appeal, counsel asserts that the beneficiary is already present in the United States and will be employed by a U.S. corporation and shall not be performing any duties or services for an Iranian entity.

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) 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 regulation at 8 C.F.R. § 214.2(l)(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.

In addition, U.S. laws and the regulations relating to Iranian economic sanctions must be applied when a petitioner requests nonimmigrant classification under section 101(a)(15)(L) of the Act for an Iranian citizen or national. Specifically, Executive Order 13059 prohibits, except where otherwise authorized, the importation into the United States of any goods or services of Iranian origin. Exec. Or. 13059 § 1, 62 Fed. Reg. 44,531 (1997). The executive order also prohibits any transaction or dealing by a United States person related to services of Iranian origin. *Id.* § 2(d).

As implemented by the United States Department of Treasury, Office of Foreign Assets Control (OFAC), the regulations state in part: "Except as otherwise authorized pursuant to this part, . . . the importation into the United States of any goods or services of Iranian origin . . . is prohibited." 31 C.F.R. § 560.201.

31 C.F.R. § 560.419 states:

The prohibitions in § 560.201 make it unlawful to hire an Iranian national normally located in Iran to come to the United States solely or for the principal purpose of engaging in employment on behalf of an entity in Iran or as the employee of a U.S. person, unless that employment is authorized pursuant to a visa issued by the U.S. State Department or by § 560.505.

The regulation at 31 C.F.R. § 560.505(a) generally authorizes the importation of Iranian-origin services into the United States for scholarly conferences and cultural performances. Additionally, as long as the alien receives the appropriate visa from the Department of State, 31 C.F.R. § 560.505(b) specifically allows services by persons otherwise qualified for a nonimmigrant visa under categories A-3 and G-5 (employees of aliens in diplomatic status), D (crewmen), F (students), I (media representatives), J (exchange visitors), M (non-academic students), O and P (aliens with extraordinary ability, athletes, artists and entertainers), Q (international cultural exchange visitors), R (religious workers), or S (witnesses).

However, 31 C.F.R. § 560.505(c) allows for the admission of L-1 nonimmigrants under more narrow circumstances:

Persons otherwise qualified for a visa under . . . L (intra-company transferees) . . . are authorized to carry out in the United States those activities for which such a visa has been granted by the U.S. State Department, *provided that the persons are not coming to the United States to work as an agent, employee or contractor of the Government of Iran or a business entity or other organization in Iran.*

(Emphasis added.)

Defining the critical terms of the Iranian economic sanctions, 31 C.F.R. § 560.305 states that the term "person" means "an individual or entity" and the term "entity" means "a partnership, association, trust, joint venture, corporation or other organization." 31 C.F.R. § 560.314 further states that the term "United States person" means "any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States."

The petitioner, [REDACTED] was incorporated in California in December 2001, and states that it is a wholly-owned subsidiary of [REDACTED] located in Tehran, Iran. In support of this claim, the petitioner submitted a copy of its Articles of Incorporation and a single stock certificate listing [REDACTED] the shareholder.¹

On February 14, 2002, the director issued a decision denying the petition. The director found that the petitioner is a subsidiary of the foreign entity located in Tehran, Iran. The director determined that the petition indicated that the beneficiary is a national of Iran and has been working for the foreign entity in Iran. The director concluded that because the beneficiary is coming to the United States to work as an employee of a business entity in Iran, she is not authorized to carry out activities in the United States as an intra-company transferee and is not eligible for admission.

On March 25, 2002, counsel for the petitioner filed a motion to reconsider and in the alternative an appeal. On appeal, counsel asserts "[t]he beneficiary is already in the United States and [is] not applying for an L-1A visa through the State Department to enter the United States." Additionally, counsel claims "the beneficiary is to be employed on a full time basis for a U.S. corporation. She shall not be performing any duties or services for an Iranian business entity."

Counsel also cites 31 C.F.R. § 560.306(d) as an exclusionary clause, which states:

- (d) The terms services of Iranian origin, Iranian-origin services, and services owned or controlled by the Government of Iran do not include:

¹ The AAO notes that, according to California State corporate records, the petitioner's corporate status in California has been suspended. Although the reason for this suspension is unclear, it raises the issue of the company's continued existence as a legal entity in the United States.

* * *

- (3) Services performed outside Iran by an Iranian citizen or national who is resident in the United States or a third country, provided such services are not performed by or on behalf of the Government of Iran (other than diplomatic and consular services), an entity organized under the laws of Iran, or a person located in Iran.

Counsel claims that the above clauses “specifically excludes services performed outside Iran, (i.e. the U.S.) unless the services are for an entity organized under the laws of Iran.” Counsel states the petitioner is not such an entity since it was organized under the laws of the state of California.

The regulations generally prohibit the importation of "services of Iranian origin," which include, as defined at 31 C.F.R. § 560.306(b):

- (1) Services performed in Iran or by an entity organized under the laws of Iran, or a person residing in Iran; and
- (2) Services performed outside Iran by a citizen, national or permanent resident of Iran who is ordinarily resident in Iran, or by an entity organized under the laws of Iran.

Counsel states, however, that because the beneficiary is already in the United States, she should be excluded from this prohibition.

Counsel is incorrect. In reviewing the information provided by the petitioner, the Form I-129 states that the beneficiary entered the United States on a B-1 visa. As defined in the Act, the B-1 nonimmigrant visa requires the holder to have a residence in a foreign country that he or she does not intend to abandon. Section 101(a)(15)(B) of the Act; *see also* 9 FAM 41.31 N2 a(1). The beneficiary indicated on the Form I-129 that her residence is Tehran, Iran. The beneficiary is not a resident of the United States simply because she is visiting the country on a temporary business visa. For this reason, the beneficiary must be considered a resident of Iran.

Thus, as the beneficiary is a resident of Iran, 31 C.F.R. § 560.306(d) does not apply and the services to be performed by the beneficiary in the United States must be considered of Iranian-origin. The AAO finds that the petitioner seeks to hire an “Iranian national normally located in Iran” to come to the United States solely for the principal purpose of engaging in employment. Pursuant to 31 C.F.R. § 560.419, this employment must be deemed unlawful unless that employment is authorized pursuant to a visa issued by the Department of State or by 31 C.F.R. § 560.505.

As previously noted, the regulation at 31 C.F.R. § 560.505 allows a person who is otherwise qualified for an L-1A nonimmigrant visa “to carry out in the United States those activities for which such a visa has been granted by the U.S. State Department, provided that the persons are not coming to the United States to work as an agent, employee or contractor of the Government of Iran or a business entity or other organization in Iran.” In a cable issued in 1999 after the publication of the OFAC regulation, the Department of State advised all diplomatic and consular posts that they may issue an L-1 visa in accordance with 31 C.F.R. § 560.505 without the need for an

advisory opinion only in cases “where there is no apparent nexus between the applicant and an Iranian-based business, organization or government entity.” State Department Cable, 98-State-128375 (July 8, 1999), reproduced in 76, No. 28 Interpreter Releases 1124 (July 26, 1999).

The OFAC regulations make it clear that the petitioner may engage an Iranian national to carry out only “those activities for which such a visa has been granted by the U.S. State Department.” Under the plain terms of the OFAC regulations, the Department of State must issue the L-1 visa and the alien must enter the United States as an L-1 nonimmigrant before those services will be deemed authorized under the regulations governing the Iran economic sanctions.² Even if CIS were to grant a change of nonimmigrant status from B-1 to L-1A pursuant to 8 C.F.R. § 248.1, there would be doubt as to whether the alien’s activities in the United States would be authorized under the Iran economic sanctions and the OFAC regulations.

Accordingly, the application for change of status must be denied. The grant of an application for change of status is a discretionary decision delegated to the Secretary of Homeland Security. Section 248 of the Act; *see also, Lun Kwai Tsui v. U.S. Atty. Gen.*, 445 F.Supp. 832 (D.D.C. 1978). It is appropriate to deny a change of status where the granting of a change of status would have the effect of condoning an apparent violation of a federal, state, or municipal law or ordinance. *Matter of Munguia*, 15 I&N Dec. 698 (Comm. 1976).

However, the director did not deny the application for change of status in this case, but instead denied the nonimmigrant visa petition. The visa petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws. When eligibility for the claimed status is established, the petition should be granted. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959) (in immigrant visa proceedings). The director must make two separate decisions on the petition and the application for change of status. Accordingly, the director should have entered one decision on the nonimmigrant visa petition and a separate decision denying the application for change of status due to the Iran economic sanctions. Because the director improperly based the decision on admissibility issues and did not enter a separate decision on the application for change of status, the decision of the director must be withdrawn.

With regard to the underlying petition, however, the petitioner has not submitted sufficient evidence to establish eligibility for the visa. While not addressed by the director, the petitioner provided insufficient evidence to establish whether the beneficiary has been or will be employed primarily in a managerial or executive capacity. When examining the 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 has provided no comprehensive description of the beneficiary’s duties that would demonstrate that the beneficiary will be managing the

² The petitioner proposes to import carpets and rugs from Iran. It is noted that the Department of Treasury regulations at 31 C.F.R. § 560.534 permit the importation of Iranian carpets and textile floor coverings into the United States and state that United States persons are authorized to “engage in transactions or dealings in or related to” Iranian-origin carpets. It is noted that this provision relates specifically to “goods” of Iranian origin and not “services.” Whether the hiring of an Iranian national might be deemed a “transaction or dealing” incidental to Iranian-origin rugs is a question of admissibility that may be examined by the Department of State at the time of visa issuance. As always, whenever a person makes an application for a visa, the burden of proving eligibility for the benefit sought remains entirely with that person. Section 291 of the Act, 8 U.S.C. § 1361.

organization, or managing a department, subdivision, function, or component of the company. In addition, the petitioner has provided insufficient evidence to demonstrate that the beneficiary was employed abroad by the Iranian parent company in a managerial or 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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Based on the record, the petitioner has not demonstrated that the beneficiary has been employed abroad or that she will be employed in the United States in an executive or managerial capacity.

Furthermore, as noted above, California State corporate records indicate that the petitioner's corporate status in California has been suspended. Therefore, the director may also wish to take this opportunity on remand to request additional evidence from the petitioner, such as its 2005 tax documents and evidence of its active corporate status, to ensure the U.S. entity is still "doing business" and will continue doing so for the duration of the beneficiary's temporary stay in the United States. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G)(2).

For these additional reasons, the appeal may not be sustained, and the matter must be remanded to the director for further action.

ORDER: The decision of the director is withdrawn. The matter is remanded to the director for further action consistent with the above and entry of a new decision.