U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

[redacted]

PUBLIC COPY

FEB 11 2004

FILE: EAC 02 245 53280 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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)

ON BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as an importer and exporter of rugs. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its general manager. The director determined that the petitioner had not submitted sufficient evidence to demonstrate that the beneficiary had been or would be employed primarily in a managerial or executive capacity.

On appeal, counsel disagrees with the director's determination and asserts that the beneficiary's duties have been and will be managerial or executive in nature.

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 Unite 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.

According to the documentary evidence contained in the record, the petitioner was incorporated in 1996 as an importer and exporter of rugs. The petitioner states that the U.S. entity is a branch of Khawaja International, located in Pakistan. The petitioner declares four employees and $215,682.00 in gross annual income. The petitioner seeks a continuation of the beneficiary's services as its general manager for two years.

The issue in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed in a primarily 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 petitioner's letter of support the beneficiary's job duties with the U.S. entity are described as follows:

> [The beneficiary's] responsibility [sic] and duties primarily are to plan manage and make policy decision regarding activities of the branch office in the United States and secure the growth of the branch office under his management. [The beneficiary] will continue to perform his responsibilities and duties as past which include make [sic] policy decision regarding the management and operation of this branch office, under his control. He also, negotiates deals, quality control of services and goods, signing contracts, managing cash flows, making personnel related decisions such as hiring, firing, employee benefits and confer directly with managers of parent company, Khawaja International, Pakistan regarding production, design, and quality in accordance to current US Market trend, taste and set price, analyze and evaluate market [sic] and report directly to the Board of Directors of parent company in Pakistan.

In a letter, dated October 28, 2002, the CEO of the U.S. entity states:

> [The beneficiary] has been successfully making policy decisions regarding the management and business operation of the U.S. branch office, develop market strategies, negotiate deals, sign contracts, manage cash flows and most importantly, advise the parent company to export goods according to the latest U.S. market trends and demands in design and quality.

The petitioner also submitted a position description, with a breakdown by hours, per week, for the beneficiary as follows:

a. Making policy decision regarding the management and operation of the US branch office: 5 hrs.
b. Negotiate deals, quality control, sign contracts, manage [sic] case flows: 5 hrs.
c. Confer managers of parent company, regarding production design and quality in accordance to current American market taste and set price, analyze and evaluate market trends design feasibility and

draft design, report to the board of directors in Pakistan: 10 hrs.

d. Advertising, promotional activities such as getting in touch with regular and prospective clients direct and through correspondence, telephone, internet, provide samples, observe and participate shows and exhibitions etc: 16 hrs.

e. Coordinate with manager of Little Persia and administrative work: 4 hrs.

In response to the director's request for additional evidence, the petitioner describes the beneficiary's job duties for the U.S. entity as follows:

> Responsibility and duties of [the beneficiary] primarily are to plan manage and make policy decision regarding activities and operation of the branch office in the United States and secure the growth of the branch office under his management. Mr. Butt is authorized to execute his 100% discretion to operate and achieve the goal of the US Branch office. Mr. Butt will continue to perform his managerial responsibilities and duties as past which are make policy decision, manage and operation of this branch office, under his control. He also, negotiates deals, quality control of services and goods, signing contracts, managing cash flows, making personnel related decisions such as hiring firing, employee benefits and confer directly with managers of parent company, in Pakistan regarding production, design, and quality in accordance to US Market trend, taste and set price, analyze and evaluate market and report directly to the Board of Directors of parent company in Pakistan. Mr. Butt have provided proper guidance so that production targets are met and became able to meet the quality and demand of the US customer. . . The beneficiary will familiarize product, services and train to staff for the day-to-day operation of the branch that will relieve him from performing non-managerial duties.

The director determined that the record contained insufficient evidence to demonstrate that the beneficiary has been or will be employed, primarily, in a managerial or executive capacity. The director further maintained that based upon evidence in the record, it was unlikely that the preponderance of the beneficiary's job duties would be so complex that they could be considered professional in nature, and that it was also unlikely

that the petitioner's organization could currently support a managerial or executive position.

On appeal, counsel asserts its disagreement with the director's decision, and submits a brief and evidence in support of its assertion. Counsel submits on appeal an organizational chart of the U.S. entity and employee position descriptions that had been previously submitted by the petitioner. Counsel further provides a summary of the beneficiary's job duties as follows:

> The responsibilities and duties performed by Mr. Butt are making policy decisions regarding the management and operations of the US branch office, develop market strategy, negotiate deals, quality control of services and goods, sign contract, manage cash flows, make personnel related decision such as hire and fire of personnel, employee benefits and confer manager of parent company, Khawaja International, Pakistan, regarding production, design and quality in accordance to current American market taste and set price, analyze and evaluate market trends in view of design and rates accordingly, participated exhibition, shows to observe the market trend and for promotion and report directly to the Board of directors in Pakistan.

Counsel continues by asserting that the beneficiary supervises, directs and controls personnel in the U.S. office, and that he directly controls two professional managerial level employees, who, in turn, supervise other employees of the U.S. entity. Counsel concludes by stating that the director's denial was baseless in that the evidence of record establishes that the beneficiary qualifies for nonimmigrant L-1A status.

Counsel's argument is not persuasive. Contrary to his assertions, the record as presently constituted is not persuasive in demonstrating that the beneficiary qualifies as an intracompany transferee in a managerial or executive capacity. The petitioner failed to adequately respond to the director's request for additional evidence. Furthermore, the record contains a description of the beneficiary's job duties that essentially paraphrases the essential elements of the statutory definitions of manager or executive. While it is apparent that the beneficiary's experience is an asset to furthering the petitioner's business objectives, it does not appear at this time that the petitioner is prepared to sustain the beneficiary in a strictly managerial or executive capacity.

The numerous assertions made by counsel are not supported by evidentiary facts. The assertions of counsel do not constitute facts. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The assertions of counsel without documentary evidence cannot be used to establish that the beneficiary is acting in a primarily managerial or executive capacity. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

On review of the complete record, it cannot be found that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. The vague position description is insufficient to establish that the beneficiary's past or proposed job duties are managerial or executive in nature. Furthermore, the petitioner has not provided persuasive evidence to establish that the beneficiary has been or will be managing the organization, or managing a department, subdivision, function, or component of the company, at a senior level of the organizational hierarchy. In the instant matter, there has been no evidence presented that details how the beneficiary manages subordinates, and with what power and authority he directs individuals' daily work activities. The record does not demonstrate that the U.S. entity contains the organizational complexity to support the proposed managerial or executive staff position. The record does not support a finding that the petitioner will be supervising a subordinate staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties. In the instant matter, the petitioner provided a copy of the U.S. entity's corporate income tax return for 2001 and a copy of the Employer's Quarterly Federal Tax Return for the quarters ending June 30, 2001 and March 31, 2002. The documents show that the petitioner only employs one employee, the beneficiary. In addition, the record contains 1099-MISC forms for 2001 that list non-employee compensation for four individuals. The petitioner has provided no explanation for this "non-employee compensation" status.

The petitioner's evidence is not sufficient in establishing that the beneficiary has been or will be directing the management of the organization or a major component or function of the organization; establishing the goals and policies of the organization; exercising wide latitude in discretionary decision-

making; or receiving only general supervision or direction from higher level executives. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title.

Furthermore, the record does not establish that the beneficiary has been or will be primarily managing a function of the organization. The beneficiary's job descriptions depict an individual in charge of the day-to-day services of the organization, not that of a functional manager. The record does not demonstrate that there are qualified employees to perform the function so that the beneficiary is relieved from performing non-qualifying duties.

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary's services are for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States pursuant to 8 C.F.R. § 214.2(1)(3)(vii).

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.