PUBLIC COPY

U.S. Department of Homeland Security

Citizenship and Immigration Services

D7

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: EAC 02 234 53286 Office: VERMONT SERVICE CENTER Date: JAN 21 2004

ON 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]

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 on appeal. The appeal will be dismissed.

The petitioner is an import company that seeks to employ the beneficiary temporarily in the United States as its "manager (marketing)" for a period of three years. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, counsel states that the adjudicating officer erred in determining that there was insufficient evidence to establish that the beneficiary qualified as a manager or executive and that the beneficiary would be employed in a managerial capacity by the organization within one year.

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 regulations at 8 C.F.R. § 214.2(l)(3) state 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.

The record contains a certificate of incorporation for Al-Amal International Inc. dated April 22, 2002. The petition was filed on July 5, 2002. The petitioner requests an L-1A nonimmigrant visa for the beneficiary so he may begin operations in the United States.

The United States entity qualifies under the new office definition at 8 C.F.R. § 214.2(l)(1)(ii) that states as follows:

> (F) New office means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

Regulations at 8 C.F.R. § 214.2(l)(3)(v) state that if a 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 (l)(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 first issue in this proceeding is whether the beneficiary 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.

The petitioner describes the beneficiary's proposed job duties in the United States as follows:

Mr. [redacted] will join the US Company on a temporary assignment to fill the position of Marketing Manager in the New York Office, in charge of the development of a market for local consumers' products nationwide. In this position, Mr. [redacted] will be responsible for implementing complete and integrated marketing programs and strategies to ensure increasing sales, profitability, and market share.

On appeal, counsel refers to a case involving an employee of the Irish Dairy Board. In the Irish Dairy Board case, it was held that the beneficiary met the requirement of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee of the petitioning organization. However, counsel has furnished no evidence to establish that the facts of the instant case are in any way analogous to those in the Irish Dairy Board case. Simply going on record without supporting documents is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, while 8 C.F.R. 103.3(c) provides that Service precedent decisions are binding on all Service employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel also cites *IKEA US, Inc. v. U.S. DOJ, INS*, 48 F. Supp.2d 22 (D.D.C. 1999) but fails to explain how that decision is relevant to this case.

In this case, the evidence submitted is insufficient to establish the beneficiary will be acting in a managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary will be managing or directing the management of a function, department, subdivision or component of the company upon his entry into the United States. The petitioner has not shown that the beneficiary will be functioning at a qualifying senior level within an organizational hierarchy.

Beyond the decision of the director, the record is not persuasive and does not contain sufficient documentation to establish that a qualifying relationship exists between the petitioner and a foreign firm, corporation or other legal entity. As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

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.