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U.S. Citizenship and Immigration Services

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FEB 28 2005

[redacted]

FILE: WAC 03 068 53124 Office: CALIFORNIA 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]

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, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its general manager 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 general partnership located in the State of California that is engaged in the sale and export of automobiles and automotive parts. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer, located in Saitama-ken, Japan. The petitioner now seeks to extend the beneficiary's employment for three years.

The director denied the petition concluding that the petitioner had failed to demonstrate that the beneficiary had been and would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, counsel claims that the beneficiary's job duties as general manager of the petitioning organization qualify him for the classification of intracompany transferee. Counsel submits a brief in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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.
>
> (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 issue in the present matter is whether the beneficiary has been and would 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), 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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 filed the nonimmigrant petition on December 24, 2002. In an appended letter from the petitioner, dated December 18, 2002, the petitioner explained that since January 2000, the beneficiary has been employed in the "high level position" of general manager and has and will continue to perform the following job responsibilities: (1) planning and developing policies and objectives for the petitioner's export department; (2) directing the legal affairs of the export department; (3) supervising the petitioner's financial matters; (4) determining prices for automobiles and automotive accessories shipped to Japan; (5) determining vehicles and accessories to be purchased by the petitioner; and, (6) developing relationships with dealers. The petitioner stated:

> Functioning autonomously, [the beneficiary] is responsible for managing and directing all activities of [the petitioning organization] as they pertain to the U.S. operations. [The beneficiary] also has discretional decision-making power over the company's daily business operations including recommendations for hiring and firing. Furthermore, he is responsible for negotiating towards an agreement specifying a wide range of conditions governing our business with our existing agent. In particular, to ensure that we are able to source necessary automobiles on a timely basis, at an agreed price. In addition, he seeks out individuals who would be able to assist in the sourcing and selection of suitable vehicles for spotting fees. He negotiates with various automobile dealers and/or individual sellers in the United States to acquire, customize, and otherwise modify vehicles for the Japanese market and to comply with Japanese vehicle regulations.
>
> In [s]um, [the beneficiary] has autonomous control over, and exercises wide latitude and discretionary decision-making in establishing the most advantageous courses of action for the successful management and direction of [the petitioning organization] and other related activities.

In a request for evidence issued by the director on February 26, 2003, the director asked that the petitioner submit: (1) its organizational chart identifying the company's managerial hierarchy and staffing levels, including the names and titles of all employees, particularly those under the beneficiary's supervision, and a description of the job duties performed by the beneficiary's subordinates; (2) Form DE-6, California Quarterly Wage Reports, for the last four quarters; (3) Form 941, Federal Quarterly Wage Reports; and, (4) the petitioner's payroll summary and Forms W-2 and W-3.

The petitioner responded in a letter dated November 4, 2003, and submitted an organizational chart reflecting its employment of the following five workers: president, general manager, two purchase-sales agents, and an automotive consultant. The petitioner identified the purchase-sales agents and automotive consultant as direct subordinates of the beneficiary, who was identified as the general manager. In its letter, the petitioner provided a description of the job duties performed by each of the three subordinates, and stated that the company is "efficiently and sufficiently operated by [the beneficiary] and two Purchase/Sales Agent employees and one Automotive Consultant." The petitioner explained that many of its operations, such as transporting vehicles throughout California, are handled by local dealers contracted by the petitioning organization. The petitioner also indicated an intent to hire two additional employees in the future. The petitioner provided all requested quarterly tax returns as evidence of its personnel.

In a decision dated June 20, 2003, the director determined that the petitioner had failed to demonstrate that the beneficiary had been and would be employed by the United States entity in a primarily managerial or executive capacity. The director noted that the record must establish that the beneficiary either performs at a senior level within the organization supervising "a sophisticated hierarchy of workers," or that the beneficiary manages a function essential to the organization. The director concluded that the petitioning organization does not employ a "sufficient subordinate staff to relieve the beneficiary from performing non-managerial and non-executive duties." The director further stated that the beneficiary would be primarily involved in performing the work of the company rather than directing the business operations. Accordingly, the director denied the petition.

Counsel filed an appeal on July 22, 2003. In counsel's letter submitted with the appeal and dated July 15, 2003, counsel outlined and described the same six job responsibilities performed by the beneficiary in the "high level position" as general manager as already provided in counsel's December 18, 2002 letter submitted with the petition. As both letters are part of the record, the job description will not be repeated herein. Counsel also reiterates the beneficiary's responsibility of "managing and directing all activities of [the petitioning organization] as they pertain to the U.S. operations" and again states that the beneficiary "has autonomous control over" the petitioner's activities, and "exercises wide latitude and discretionary decision-making." Counsel also notes the petitioner's use of contract employees to transport vehicles throughout California and states that the petitioner intends to hire an additional two employees by September 2003.

On review, the petitioner has not demonstrated that the beneficiary has been and would be employed in the United States in a primarily managerial or executive capacity. Counsel failed to submit on appeal any evidence that was not already provided for review and consideration by the director. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Simply asserting that the beneficiary is employed in a high level position of general manager and restating the beneficiary's job responsibilities without addressing the specific issues raised by the director does not qualify as independent and objective evidence. Counsel is obligated to provide evidence substantiating his claims of the beneficiary's employment in a managerial or executive capacity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). For this reason, the appeal will be dismissed.

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.