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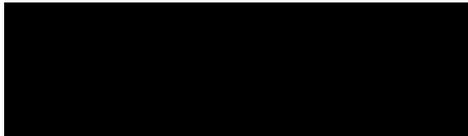
U.S. Department of Homeland Security
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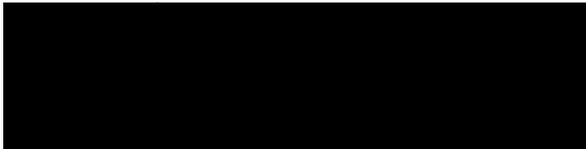


FILE: SRC 02 254 51660 OFFICE: TEXAS SERVICE CENTER Date: FEB 07 2005

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 Director, Texas Service Center, denied the petition for a nonimmigrant visa. The director then reviewed the petitioner's motion to reopen and reconsider and subsequently affirmed the denial of the petition. 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 vice president 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 corporation organized in the State of Texas and claims to be engaged in property management. The petitioner states that it is an affiliate of a foreign entity, which is located in Pakistan. The beneficiary was initially granted a one-year period of stay in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a managerial or executive capacity. That conclusion was upheld in the director's subsequent response to the petitioner's motion to reopen and reconsider.

On appeal from the director's latest decision, counsel asserts that the director's conclusion was erroneous. No additional information has been submitted.

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.
- (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.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be employed 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 support of the petition, the petitioner provided the following description of the beneficiary's job duties:

[The beneficiary] will be employed as the Vice President of the Petitioner, and will be responsible for performing the following duties for the Petitioner; such duties to include: directing financial activities of the firm, including preparation of profit and loss statements and balance sheet; preparation of budgets by compiling data based on statistical analysis of

past and current years; summarizing and forecasting company's business activities and financial position based on past, present and expected operations; arranging for auditing of accounts; directing financial planning; directing determination of depreciation rates; and establishing major economic objectives and policies.

In the performance of her duties, the Beneficiary will receive minimum supervision from the Board of Directors, and the Beneficiary will exercise wide discretion and latitude in the performance of his duties.

On October 17, 2002, the director requested that the petitioner provide additional evidence establishing that the beneficiary would primarily perform managerial or executive duties. The petitioner was instructed to submit its organizational chart identifying the beneficiary and the individuals she supervises. The petitioner was also asked to provide a list of the beneficiary's duties indicating the percentage of time spent performing each duty.

The petitioner's response included the following description of the beneficiary's duties:

The beneficiary is the Vice President of our company. As such, she is primarily engaged in management and supervisory duties. She also heads the Administrative Division of our corporation—an essential function. It is essential since one of the main functions of our corporation is "management of properties". [sic] this function requires about 90% of her time. The remaining 10% of her time is spent on corporate duties as the Vice President of the corporation, e.g. attending Board meetings. Since she is occupied completely with these duties, it is necessary for us to have another person to manage the rest of the business.

In particular, [the beneficiary] primarily and directly supervises the office staff of 4 persons—one which is a professional Chartered Accountant. The Chartered Accountant oversees the tax reports and bookkeeping of the corporation. She also interacts with Mr. ~~Farooq Samad~~ who is our Executive Vice President and Mr. [REDACTED] the Chief Finance Officer. She also deals with vendors and approves purchase orders generated by other staff members. She also is charged with setting personnel policies and approving leave. In addition she hires, trains and supervises the other persons in her department.

On April 10, 2003, the director denied the petition noting that the petitioner claimed six employees in its petition and that of those six employees "a preponderance" were serving in managerial or executive positions. The director ultimately concluded that the petitioner failed to submit sufficient evidence to establish that the beneficiary has been and would be primarily performing duties of a managerial or executive nature.

On motion, counsel stated that the beneficiary supervises an electrical engineer, which is a professional position. Counsel also stated that because the petitioner's main activity is property management the company needs to have mostly managerial staff. However, the mere fact that the company's employees possess mainly managerial or executive titles does not conclusively establish the nature of the duties that these individuals perform. In the position description provided in response to the request for evidence, the petitioner stated that the beneficiary manages the essential function of property management. It is noted that the term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section

101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). It is noted that if a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). In this matter, the petitioner provided an abbreviated and general list of duties that does not convey an understanding of what the beneficiary actually does on a daily basis. The petitioner failed to specify the capacity in which she "deals with vendors" and did not define what is meant by approving purchase orders. Since the petitioner is in the business of managing property there is no indication what purchases the beneficiary would be approving and what percentage of her time is consumed with this specific task. Furthermore, the petitioner's initial description of the beneficiary's duties indicates that the beneficiary has been composing profit and loss statements and providing other services of a financial nature. This suggests that the beneficiary has been and would be acting in the capacity of an accountant, which would require her to perform rather than manage a function. Thus, not only does the first list of duties suggest that the beneficiary performs an essential function, which negates the entire notion that she qualifies as a function manager, but it also conflicts with the second description of duties provided in response to the director's request for additional evidence. In either scenario, the petitioner has failed to provide sufficient documentary proof to establish that the beneficiary would primarily perform managerial or executive duties.

Furthermore, the director clearly conveyed her concern over the fact that the petitioner had relatively few employees, most of whom possessed managerial or executive titles. The underlying implication is that such a hierarchical structure left few employees to actually perform the non-executive and non-managerial duties. Although the petitioner provided a number of W-2 wage and tax statements for its previous employees, the statements were all for the year 2001. The petitioner also provided its own quarterly wage statements for all four quarters of 2002. However, the statement for the third quarter of 2002, which encompasses the time period during which the petition was filed, is not accompanied by a list of employees among whom the quarterly wages were divided. While the petitioner's quarterly wage reports for the first two quarters of 2002 are each accompanied by the list of employees to whom wages were paid from January through June of 2002, those time periods are irrelevant in this instances, as the petition was not filed until August of 2002, which took place during the third quarter. Thus, the director was not able to determine who was working for the petitioner at the time the petition was filed, what salaries each individual received, and whether all of the claimed employees were even employed on a full-time basis. The documents submitted simply do not substantiate the notion that the petitioner had a sufficient support staff to relieve the beneficiary of having to engage heavily in performing non-qualifying duties.

On appeal, from the director's decision affirming the denial counsel merely points to the brief and information previously submitted with the motion. No additional evidence or information has been provided.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The record does not establish that a majority of the beneficiary's duties have been or will be primarily directing the management of the organization. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel, or that she will primarily manage a

function, which would actually be carried out by others in the organization's hierarchy. The petitioner has not demonstrated that it has reached or will reach a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies will constitute significant components of the duties performed on a day-to-day basis. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

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.