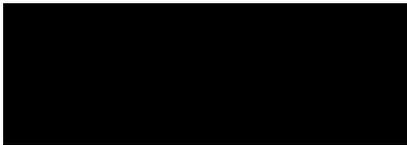




U.S. Citizenship  
and Immigration  
Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**



D 7

File: WAC-01-246-54470 Office: CALIFORNIA SERVICE CENTER Date: FEB 18 2005

IN RE: Petitioner:

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)

IN 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.

A handwritten signature in cursive script, appearing to read "Eric Felder".

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 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 California that operates as an importer of furniture. The petitioner claims that it is the subsidiary of [REDACTED] located in Iran. The beneficiary was initially granted a three-year period of stay in L-1A status, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that (1) the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity, and (2) the beneficiary is not authorized to carry out activities in the United States as an intra-company transferee pursuant to Executive Order 13059, as he would be working as an employee of a business entity or other organization of Iran.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the evidence of record reflects that the beneficiary would be performing in an executive or managerial capacity. In support of this assertion, counsel submits a brief.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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 first issue in the present matter is whether the beneficiary will 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), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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 initial petition, the petitioner provided that the beneficiary's job duties include "Plan[ning], direct[ing] and supervis[ing] day to day operations."

On September 20, 2001, the director issued a Notice of Intent to Deny the petition. Specifically, the director stated that evidence shows that the foreign entity located in Iran is the parent company of the petitioner. Therefore, the beneficiary is not authorized to carry out activities in the United States as an intra-company transferee pursuant to Executive Order 13059, as he would be working as an employee of a business entity or other organization of Iran. The director further stated that the record contains insufficient evidence to demonstrate that the beneficiary will be employed in a managerial or executive capacity. The director noted that the information provided by the petitioner describes the beneficiary's duties only in broad and general terms, without detail regarding the actual duties to be performed and the percentage of time devoted to each. The director found that, as the beneficiary is the petitioner's sole employee, he is likely directly providing the services of the business, rather than performing managerial or executive duties. The director finally noted that the petitioner does not possess the organizational complexity to warrant having an executive.

In a response dated October 17, 2001, counsel for the petitioner submitted a letter further discussing the beneficiary's eligibility. Regarding whether the beneficiary is not authorized to carry out activities in the United States as an intra-company transferee pursuant to Executive Order 13059, counsel stated:

[The petitioner] is a California Corporation. Beneficiary will be and has been working solely for the U.S. entity since 1997 as President. Consequently, Beneficiary should not be barred from the extension of his previously approved L-1A due to the implementation of the Executive Order pertaining to Iranian transactions.

Regarding whether the beneficiary will be employed in a primarily managerial or executive capacity, counsel asserted that the beneficiary meets the requirements for both managerial and executive capacity. In the letter, counsel stated:

The beneficiary has experience as Managing Director in which the beneficiary is responsible for all programs, services and policies of the organization, including developing and executing programs, sales and budgets; directing and coordinating all activities of staff, seeking contracts from private sources, and maintaining effective public relations activities and relations with public and private organizations.

The beneficiary's position involves job duties satisfy [sic] the first element of the managerial capacity requirements since the Beneficiary was employed in a qualifying managerial or executive capacity for the Parent Company entity until he was transferred to the United States to serve as President of its U.S. Subsidiary in 1997. . . .

The beneficiary qualifies under the second requirement because he is involved in the management of an essential function of the organization. Based on the financial growth that is a direct result of opening the U.S. Subsidiary and the job duties described by Petitioner, it is evident that the Alien is involved in the management of an essential function of the organization. . . .

The Beneficiary satisfies the third requirement of the managerial capacity definition since he has authority to hire, fire, and promote the professionals at the U.S. Subsidiary.

Finally, the Beneficiary satisfies the fourth element to establish managerial capacity in that he supervises the day to day business affairs of the organization. Since the President of the U.S. entity engages in such activity, it is apparent that the Beneficiary's job duties fits [sic] squarely within the definition of managerial capacity. . . .

The first element [of executive capacity] is satisfied based on the Petitioner's statement regarding the beneficiary's job duties, namely that the Beneficiary was transferred to serve as the President of the U.S. Subsidiary, where the beneficiary supervises the day to day business affairs of [the petitioner], and the Beneficiary has the authority to hire, fire, and promote the staff of the organization. This evidence verifies that the California Corporation is a major component of the organization and that the Beneficiary directs the management of this major component of [the petitioner]. . . .

The Beneficiary establishes the goals and policies of the California Corporation which is a U.S. Subsidiary of the Organization. Thus, it is apparent that the Beneficiary does in fact establish the goals and policies of the organization. . . .

[T]he Beneficiary has wide latitude in discretionary decision making. . . . [T]he Beneficiary only receives general supervision from a higher level executive as President of [the petitioner].

On May 10, 2002, the director denied the petition. The director determined that the petitioner did not establish that the beneficiary will be employed in a primarily managerial or executive capacity. Specifically, the director stated that "the beneficiary . . . is the petitioner's only employee, [thus] there are no other employees to perform all the non-managerial duties required to run the furniture import/export business. As such, the beneficiary is performing all the duties of the import/export business rather than working through other executives, managers, or professional employees." The director further stated that "[t]he petitioner has not shown that the beneficiary would be functioning at a senior level within an organizational hierarchy." In a separate decision document, the director restated her finding that the beneficiary is not authorized to carry out activities in the United States as an intra-company transferee, pursuant to "31 C.F.R. [§] 560.505(c) Final rule; amendment: Iranian Transactions Regulations: Implementation of Executive Order 13059," as he would be working as an employee of a business entity or other organization of Iran.

On appeal, counsel for the petitioner asserts that the evidence of record reflects that the beneficiary would be performing in an executive or managerial capacity. In support of this assertion, counsel submits a brief. Significant portions of counsel's brief contain paraphrased or directly quoted material from his October 17, 2001 response to the director's Notice of Intent to Deny. As pertinent parts of the October 17, 2001 letter are provided above, that material will not be repeated here. Counsel's brief adds to the record the following assertions:

The [petitioner] is being virtually held back by [Citizenship and Immigration Services' (CIS)] failure to approve its Petition to transfer the Beneficiary. Despite the financial investment in the [petitioner], the Company cannot be expected to expand unless and until the President who has authority to hire, fire, and promote personnel can extend his L-1A status. . . .

The record contains ample evidence of organizational complexity to warrant having the beneficiary perform executive duties. For example, the record contains the Form 1120, U.S. Corporate Income Tax Return which shows Petitioner has gross sales which amounted to \$137,376.00. The fact that the Petitioning company engaged in business in excess of One hundred Thousand dollars demonstrates that this is a sophisticated and complex business operation. . . .

The Service does not state the facts on which the conclusion has been made that the record does not establish that the beneficiary has been and will be employed in a primarily executive or managerial capacity. . . . [CIS] merely restates the definition of the meaning of executive capacity under the Act, while the petitioner addressed each requirement and supplied evidence demonstrating Beneficiary qualifies for the managerial/executive position as President for the [petitioner]. . . .

The [petitioner] plans to hire additional personnel to maintain contacts with U.S. Suppliers. Once this phase is reached, additional staff will be appointed to meet the specific needs of [the petitioner]. These goals can only be achieved under the guidance and executive leadership of the Beneficiary.

Upon review, counsel's assertions are not persuasive. When examining the executive or 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(1)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* In the instant matter, the beneficiary's job description was vague, providing little insight into the true nature of the tasks the beneficiary will perform. The petitioner's indication that the beneficiary's job duties include "Plan[ning], direct[ing] and supervis[ing] day to day operations" provides no explanation of how the beneficiary will carry out those objectives. Counsel's letter in response to the director's Notice of Intent to Deny provides that the beneficiary has been responsible for "all programs, services and policies of the organization, including developing and executing programs, sales and budgets; directing and coordinating all activities of staff, seeking contracts from private sources, and maintaining effective public relations activities and relations with public and private organizations." This statement does not indicate what actual tasks the beneficiary will perform on a daily basis. For example, the petitioner has not described what programs that the beneficiary will develop and execute, such that the AAO can determine what tasks are involved. The petitioner has not indicated what public relations activities it undertakes as a furniture importer, such that the AAO can properly understand the beneficiary's associated activities. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In fact, most of counsel's descriptions of the beneficiary's duties are circuitous and paraphrase the statutory definitions of managerial and executive capacity. For example, counsel states that "[t]he Beneficiary satisfies the third requirement of the managerial capacity definition since he has authority to hire, fire, and promote the professionals at the U.S. Subsidiary." This statement is a paraphrase of section 101(a)(44)(A)(ii) of the Act, and provides no additional information regarding the beneficiary's actual duties. Counsel states that "the Beneficiary satisfies the fourth element to establish managerial capacity in that he supervises the day to day business affairs of the organization. Since the President of the U.S. entity engages in such activity, it is apparent that the Beneficiary's job duties fits [sic] squarely within the definition of managerial capacity." This statement is circuitous, and simply paraphrases section 101(a)(44)(A)(iv) of the Act. Counsel states that "[t]he Beneficiary establishes the goals and policies of the California Corporation which is a U.S. Subsidiary of the Organization. Thus, it is apparent that the Beneficiary does in fact establish the goals and policies of the organization." Again, this statement is circuitous, and quotes section 101(a)(44)(B)(ii) of the Act without providing specific information regarding the beneficiary's actual duties. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1103.

Further, the statement that the beneficiary's duties include "directing and coordinating all activities of staff" is inconsistent with the petitioner's representation that the beneficiary is its sole employee. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The fact that counsel provides this inconsistent statement while discussing the beneficiary's duties calls into question the veracity of the remaining job description. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Thus, the description of the beneficiary's duties does not allow the AAO to sufficiently determine the actual tasks that the beneficiary will perform, such that they can be classified as managerial or executive in nature.

In her decision, the director stated that "the beneficiary . . . is the petitioner's only employee, [thus] there are no other employees to perform all the non-managerial duties required to run the furniture import/export business. As such, the beneficiary is performing all the duties of the import/export business rather than working through other executives, managers, or professional employees." As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, the petitioner provides that it operates as an importer of furniture. Thus, it is apparent that the reasonable needs of the petitioner require employees to perform numerous non-managerial and non-executive tasks such as placing orders with suppliers abroad, taking orders from customers in the United States, receiving shipments of merchandise, coordinating with shipping companies, answering inquiries from customers, paying bills, conducting basic banking tasks such as balancing a checkbook and making deposits, answering the telephone, and providing custodial services. The petitioner has provided no indication as to who will perform any of

these duties. As the petitioner indicates that the beneficiary is its sole employee, it is apparent that the beneficiary must spend a significant amount of time performing these non-managerial and non-executive tasks. Thus, the above analysis of the reasonable needs of the petitioner's operation suggests that the beneficiary would be required to perform primarily non-managerial and non-executive tasks. The petitioner has not met its burden to show otherwise.

Counsel states that "[the petitioner] is being virtually held back by [CIS's] failure to approve its Petition to transfer the Beneficiary. Despite the financial investment in the U.S. Subsidiary, the Company cannot be expected to expand unless and until the President who has authority to hire, fire, and promote personnel can extend his L-1A status." Counsel further states that "[the petitioner] plans to hire additional personnel to maintain contacts with U.S. Suppliers. Once this phase is reached, additional staff will be appointed to meet the specific needs of [the petitioner]. These goals can only be achieved under the guidance and executive leadership of the Beneficiary." The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Thus, the petitioner's future plans for expansion do not support that it was capable of employing the beneficiary in a primarily managerial or executive position as of the date of filing the present petition. Further, counsel's assertion that CIS's failure to approve the present petition is holding back the petitioner's expansion is unpersuasive, particularly in light of the fact that CIS previously granted the beneficiary a three-year period of stay in L-1A status.

Counsel states that the petitioner's gross receipts reflect that the petitioner possess the organizational complexity to warrant having the beneficiary perform executive duties. However, as discussed above, the petitioner has provided little specific description regarding the beneficiary's duties. Again, 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). The fact that the petitioner "engaged in business in excess of One hundred Thousand dollars" provides no indication as to the beneficiary's duties or employment capacity.

Counsel alleges that CIS did not "state the facts on which the conclusion has been made that the record does not establish that the beneficiary has been and will be employed in a primarily executive or managerial capacity." In visa 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. Counsel's assertion does not comport with the Act, as CIS does not have the burden to point to specific evidence to show why the petitioner is not eligible for the benefit sought. The petitioner has the burden to prove eligibility, and here that burden has not been met.

Based on the foregoing, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, as defined in sections 101(a)(44)(B) and 101(a)(44)(A) of the Act. For this reason, the appeal will be dismissed.

The second issue in this proceeding is whether the regulation at 31 C.F.R. § 560.505(c) that implemented Executive Order 13059 prohibits the beneficiary from carrying out activities in the United States as an intra-company transferee.

The director found that the beneficiary is not authorized to carry out activities in the United States as an intra-company transferee, pursuant to "31 C.F.R. [§] 560.505(c) Final rule; amendment: Iranian Transactions Regulations: Implementation of Executive Order 13059," as he would be working as an employee of a business entity or other organization of Iran. On appeal, counsel did not address this ground for denial. Thus, counsel concedes the director's finding on this issue and the director's finding will be affirmed. For this additional reason, the appeal will be dismissed.

In visa 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.