



U.S. Citizenship  
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Services

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File: SRC 04 144 50036 Office: TEXAS SERVICE CENTER Date: **MAY 12 2006**

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 Florida that claims to be engaged in property development and hotel management services. The petitioner claims that it is the subsidiary of Shaival Realty (Pvt) Ltd., located in Navrangpura, India. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay for two years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

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 beneficiary is performing the duties of an executive and claims that the director misapplied the law by denying the petition. Counsel also contends that the petitioner had another employee at the time the petition was filed, the beneficiary's spouse, who was not included on the petitioner's previously submitted organizational chart or quarterly wage reports. Counsel submits a brief and additional evidence in support of the appeal.

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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The primary 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.

The nonimmigrant petition was filed on April 23, 2004. In a March 31, 2004 letter, the petitioner indicated that it anticipated employing four to five individuals "this year" and provided the following description for the beneficiary's role as president of the company:

The duties of this professional position include executive responsibility for all financial and management analysis activities. [The beneficiary] will be responsible for planning, developing, and establishing policies and objectives of the business organization in accordance with the board's directives and corporation charter. He will confer with the overseas company officials to plan business objectives, develop organizational policies, and establish responsibilities and procedures for attaining our company's objectives. He will be responsible for conducting management studies and analyzing financial reports on operations; collecting and interpreting economic and statistical data to prepare budget estimates; determining work load, personnel, and equipment requirements, and to forecast future needs; and monitoring the supervision of all employees to make sure company procedures and all local, state, and federal laws are being followed.

The petitioner did not submit a description of its business operations, but did provide (1) a property management agreement, commencing January 1, 2004, between the petitioner and Island Beach Management, Inc. under which the petitioner would be responsible for managing the 40-unit Island Beach Resort; and (2) an expired lease agreement (valid from December 1, 2002 until November 30, 2003) between the petitioner and Marina View Motel, Inc., under which the petitioner would lease and operate the Marina View Motel.

On June 4, 2004, the petitioner issued a request for additional evidence to establish that the beneficiary would be employed in a managerial or executive capacity under the extended petition. Specifically, the director instructed the petitioner to submit: (1) an organizational chart of the U.S. company, specifying the

beneficiary's position within the organizational hierarchy, as well as the names, job titles and duties of the employees the beneficiary supervises; (2) state quarterly wage reports from the year 2003 to the present; and (3) Employer's Quarterly Federal Tax Returns for the year 2003 to the present.

In a response dated July 20, 2004, former counsel for the petitioner provided the following additional information regarding the beneficiary's duties in the United States:

[The beneficiary] acts in an executive/managerial capacity because he directs the management of all essential functions within the organization. His responsibilities include making all determinations regarding market penetration including fixing prices, negotiating contracts for property management and sub-contractors, making executive decisions regarding the allocation of funds to accomplish marketing goals, as well as managing a budget. [The beneficiary] has spearheaded the organization's first entry into an overseas market by developing the strategies for international business expansion into the United States. In addition, [the beneficiary] has sole authority regarding the hiring and firing of personnel and exercises unfettered discretion over the day-to-day operations of [the petitioner]. He is directly responsible for establishing the goals and policies of the organization and he directs its management with wide latitude in discretionary decision-making with only limited and general input from the parent Indian company.

The petitioner also submitted a July 12, 2004 letter, in which it further described the beneficiary's duties and the petitioner's operations:

[The beneficiary] . . . is directly responsible for the development of new business which includes directing and coordinating the operations of the business organization; formulating and administering organization policies; administering company policies; developing goals and objectives; and reviewing activity, operating, and sales reports to determine changes in programs or operations required.

[The petitioner] is a property management company, which is currently responsible for managing two hotels and resorts. . . . We are also in negotiations to manage several other resort properties. . . . [I]t is incumbent upon the beneficiary to operate all of the essential managerial functions of our company, but also to direct and coordinate the company activities of the properties we manage. Thus, the beneficiary is performing executive responsibilities for all three entities.

He is responsible for coordinating and reviewing all of the activities that occur at the Marina View Motel and Island Beach Resort. He is in constant communication with Rogger Griffith, the Site Manager of Marina View Motel and Meera Kakkar, Site Manager for the Island Beach Resort. The beneficiary must direct and coordinate the activities of the Site Managers to make sure that the companies' objectives are being met and that maximum returns on investments and productivity occur, direct the financial management of the companies; develop new business; conduct management studies and analyze financial reports on

operations; collect and interpret economic and statistical data to prepare budget estimates; determine work load, personnel, and equipment requirements, and to forecast future needs; and monitor the supervision of all employees to make sure company procedures and all laws are being followed.

Furthermore, [the beneficiary] is responsible for negotiating contracts with various sub-contractors; reviewing their progress; and supervising and coordinating all of the activities of the sub-contractors. [The beneficiary] uses sub-contractors for the resort's maintenance, security and landscaping.

Although the Site Managers and staff of both the Marina View Motel and Island Beach Resort as well as the sub-contractors are not directly paid employees of [the petitioner], [the beneficiary] . . . is directly responsible for supervising and directing their activities.

The petitioner submitted the requested state and federal quarterly reports, which confirmed that the beneficiary is the petitioner's sole payroll employee. The petitioner also submitted its organizational chart depicting the beneficiary as president over: (1) the site manager of the Marina View Motel, who supervises motel staff; (2) the site manager of the Island Beach Resort, who supervises resort staff; (3) an accountant; and (4) contract labor. As evidence of payments to the contractors, the petitioner submitted a number of invoices issued by various pool maintenance, elevator maintenance, lawn maintenance and security companies to the Island Beach Resort. The petitioner did not provide the requested job descriptions for the beneficiary's subordinate employees.

The director denied the petition on August 3, 2004, concluding that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director observed that the beneficiary is the petitioner's only employee, and found that the petitioner had not demonstrated that the beneficiary's primary assignment has been or would be directing the management of the organization or primarily directing or supervising a subordinate staff of professional, managerial or supervisory personnel who relieve him from performing non-qualifying duties. The director determined that while the beneficiary may exercise discretion over the day-to-day operations of the business, he would also be required to perform many non-qualifying tasks.

On appeal, counsel for the petitioner asserts that the director has erred in its application of law to the facts of the case and asserts that the duties performed by the beneficiary are "very much the same" as those found in the statutory definitions of managerial and executive capacity. Counsel asserts that the number of employees supervised by the petitioner is not determinative of the beneficiary's employment capacity, and states that CIS must take into account the reasonable needs of the organization in light of its overall purpose and stage of development.

Counsel further asserts that the beneficiary's spouse worked for the petitioner from September 10, 2003 until May 13, 2004, when the validity of her employment authorization expired. The petitioner submits an affidavit from the beneficiary's spouse in which she attests to her duties of holding executive responsibility for financial and management analysis activities; coordinating the work of hotel/resort managers, the company

accountant and contract workers; assisting the president in planning, developing and establishing the policies and objectives of the organization; and conducting management studies and analyzing financial reports; collecting and interpreting economic and statistical data to prepare budget estimates; determining work load, personnel and equipment requirements, and monitoring the supervision of all employees. Counsel explains that the beneficiary never considered his spouse an employee although she was “helping the business as an operations manager.” The petitioner submits a revised organizational chart which includes the beneficiary’s spouse as an operations manager reporting to the beneficiary.

Counsel states that the beneficiary’s spouse was not reported on the petitioner’s Florida Form UCT-6, Employer’s Quarterly Report, for the first quarter of 2004 “because she never could work for any other organization because of her extended hours of work at [the petitioning company].” An affidavit from the beneficiary states that he hired his spouse as operations manager “and promised her \$15.00 per hour on regular hours on overtime as applicable payable on demand or the equivalent of that in shares of [the petitioning company].”

Counsel concludes that the beneficiary clearly exercises discretion over the day-to-day operations of the business and performs much of the activities through his managers who supervise professional employees.

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(l)(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.*

The petitioner and counsel have provided vague and non-specific job descriptions that fail to demonstrate what the beneficiary does on a day-to-day basis. The job descriptions provided for the beneficiary merely paraphrase the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). For example, the petitioner stated that the beneficiary would be responsible for “planning, developing and establishing policies and objectives” of the company and that he “directs its management with wide latitude in discretionary decision-making with only limited and general input from the parent Indian company.” On appeal, counsel again submits a position description that paraphrases the statutory definition and asserts that the description is “very much the same” as the duties described therein. However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

The petitioner also indicates that the beneficiary’s duties include conducting management studies, analyzing financial reports, and collecting and interpreting economic and statistical data. The petitioner has not explained how these duties fall under the definitions of managerial or executive capacity. Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what

proportion of the beneficiary's duties is managerial or executive in nature, and what proportion is actually non-managerial or non-executive. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Overall, the petitioner's descriptions of the beneficiary's duties are too general to establish that he would be performing primarily managerial or executive duties under the extended petition. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), 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, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

The petitioner in this matter has not adequately described or documented the nature of the petitioner's business, thus making it difficult to determine how the petitioner operates, how it has staffed its operations and what its reasonable needs are with respect to staffing. When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business.

The record contains insufficient evidence to establish the nature of the services the petitioner provides to the two properties it claims to manage. The property management agreement between the petitioner and the Island Beach Resort indicates that the petitioner was required to prepare and submit for approval a management plan which would, among other things, prescribe the number, qualifications and duties of the personnel to be employed. The petitioner has not provided a copy of this management plan, which would be particularly helpful in determining the U.S. entity's actual responsibilities and staffing needs under the agreement. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The property management agreement also indicates that the owner of the property would reimburse the petitioning company for compensation payable to the on-site management and maintenance employees, thus suggesting that these employees would be directly paid employees of the petitioning company. However, the petitioner has stated that none of the beneficiary's claimed subordinates, including the "site managers" are direct employees of the petitioning company. The record is devoid of any evidence documenting the employment of the two "site managers," nor did the petitioner provide the requested job descriptions for the beneficiary's claimed subordinate employees. Without this critical information, the AAO cannot find that the beneficiary actually supervises these employees, much less make a determination that the beneficiary's subordinates would serve in a managerial, supervisory or professional capacity, or that they would relieve the beneficiary from performing primarily non-qualifying duties. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

While the record establishes that independent contractors have provided routine maintenance services at one of the properties managed by the petitioner, the petitioner has not established that it employed any staff to perform the day-to-day clerical, administrative and financial functions of the business or staff to provide the site management services required by the property management agreement. The petitioner's blanket claim that the beneficiary has executive authority over all three businesses is not supported by evidence in the record. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as president, an independently contracted accountant whose services have not been described, and various maintenance service providers. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not provided a detailed description of the beneficiary's actual duties and has therefore not established this essential element of eligibility.

The AAO acknowledges counsel's claim on appeal that the beneficiary's spouse served as the petitioner's operations manager at the time the petition was filed. Counsel's assertion is not persuasive. The job description provided for the "operations manager" position is essentially identical to that provided for the beneficiary's position in support of the initial petition filing and is therefore not credible. The beneficiary states in an affidavit that he hired his spouse and promised her wages of \$15 per hour or stock in the petitioning company. The petitioner has provided no evidence that she has been compensated in any way. Further, the beneficiary stated on her Form I-539, Application to Extend/Change Nonimmigrant Status, filed concurrently with the instant petition, that she has not been employed in the United States since last admitted in L-2 status on October 26, 2002. Therefore, the AAO is left to question the validity of the petitioner's claim. 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. 582, 591 (BIA 1988). The petitioner has not established that it employed the beneficiary's spouse as its operations manager at the time the petition was filed. Rather it appears that the petitioner is attempting to add artificial complexity to the petitioner's organizational structure in an effort to establish that the company can support the beneficiary in a managerial or executive capacity. A petitioner may not make material changes to a

petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The petitioner has indicated its intent to expand its operations and hire four to five additional employees in the future. The AAO will not consider the petitioner's future staffing levels in determining whether the beneficiary would be employed in a qualifying capacity under the extended petition. 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). As discussed above, if the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

The petitioner has not established that the beneficiary is acting in a managerial capacity by directing and controlling a staff of managerial, professional or supervisory employees or managing an essential function of the petitioner's organization. *See* section 101(a)(44)(A)(ii). The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the record does not contain sufficient evidence that the petitioner has been engaged in the regular, systematic, and continuous provision of goods and/or services in the United States for the previous year as required by 8 C.F.R. § 214.2(1)(14)(B). The petitioner has submitted: (1) its financial statement for the year ended on December 31, 2003; (2) its 2003 IRS Form 1120, U.S. Corporation Income Tax Return, indicating gross receipts or sales of \$100,950 (3) a property management agreement for the Island Beach Resort; (4) an expired lease for the Marina Bay Motel; and (5) its bank statements for 2003. The petitioner has not provided any financial documentation for 2004, nor any invoices, evidence of payments made or received or other documentation of business transactions that would establish that the company has been actively engaged in the regular, systematic and continuous provision of services for the previous year. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683

(9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.