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DATE: **APR 19 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE:

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa 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 classify the beneficiary 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, a California corporation established in November 2009, states that it intends to engage in the import of gold jewelry. It claims to be a subsidiary of [REDACTED] located in [REDACTED]. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity; and (2) that the petitioner has secured sufficient physical premises to house the new office.

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 director failed to give proper weight to the petitioner's evidence in light of the fact that the beneficiary has been running a successful foreign business for over 30 years. Counsel further contends that the petitioner provided evidence that it has secured adequate physical premises for the initial stages of its business plan. Counsel submits a brief and additional evidence in support of the appeal.

I. The Law

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)(3)(v) further provides that if the 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.

II. Discussion

A. Physical Premises to House the New Office

The first issue to be addressed is whether the petitioner established that it has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A), as of the date the petition was filed.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner indicated its mailing and physical address as [REDACTED] In support of the petition, the petitioner provided the following evidence related to its physical premises:



- Copy of page 1 (of 2) of a sublease agreement between [REDACTED] as tenant and the beneficiary as subtenant. The sublease agreement indicates that the beneficiary will pay Lanza *et al* "the monthly rent stated in the original lease, which is \$1,000." The sublease indicates that the beneficiary "agrees to abide by all terms and conditions of original lease." The petitioner did not submit the signature page of the agreement. The sublease indicates a term of April 1, 2009 through March 31, 2011.
- Copy of the Lease Agreement between [REDACTED] dated November 19, 2008. According to the terms of the agreement, the lessee agreed to limit the use of the 1,200 square foot premises to the operation of a wireless cellular phone and tobacco retail store. The monthly rent specified in the lease is \$1,980. Article 15 of the agreement states that the lessee must obtain written consent from the landlord before assigning or subletting the premises or any part thereof. The lease is valid for a three-year term beginning December 1, 2008. The petitioner did not submit the signature page of the lease.
- Color photographs of what appears to be a cellular telephone store. A detachable sign bearing the petitioner's name has been attached to one of the store's windows. The interior photographs show that two display cases and one display wall in the store contain jewelry. Cellular phones and accessories are also clearly visible in the photographs.

In its letter dated October 14, 2009, the petitioner indicates that it the U.S. office will be established as an import, marketing and sales office, and will later expand to include design and retail sales of jewelry.

The director issued a request for additional evidence (RFE) on January 29, 2010. The director instructed the petitioner to submit: (1) a complete copy of the U.S. company's lease that is signed by both the lessor and lessee; (2) if the premises is subleased, a letter from the owner or property management company which confirms that the property owner has granted permission to sublease to the U.S. company; (3) a copy of the contract between the owner and lessee granting authorization to sub-lease the premises; (4) additional photographs of the U.S. business premises; and (5) other evidence including an occupancy permit, a business telephone number, and proof of insurance.

In response, the petitioner provided additional photographs. The exterior sign identifies the petitioner's name. The exterior also includes advertisement posters for several cellular service providers. The interior photographs show a detachable sign for the petitioner's business, and again, two display cases and a display wall stocked with jewelry. The petitioner re-submitted the unexecuted lease addendum, page 1 of the beneficiary's sublease agreement with [REDACTED] and a copy of the master lease agreement between [REDACTED]

The director denied the petition on March 23, 2010, concluding that the petitioner failed to establish that it has secured sufficient physical premises to house the new office. In denying the petition, the director noted deficiencies in the submitted documentation. Specifically, the director noted that the petitioner did not provide the signature page of the master lease agreement, a fully executed copy of the lease addendum assigning the lease to [REDACTED] or the second page of the petitioner's sublease agreement with [REDACTED]

On appeal, counsel for the petitioner states that the petitioner "will act as an import, marketing and sales office which will imports its merchandise and primarily sell its merchandise to wholesalers." Counsel notes that the petitioner does not require a large office to conduct business, and is currently "subleasing an office and space from [REDACTED] Counsel refers the AAO to review the original lease, lease amendment and sublease, and attaches copies of the previously submitted evidence.

Upon review, the petitioner has not established that it has secured sufficient physical premises to house the new office. While the petitioner has submitted a master lease agreement, addendum to the lease agreement, and sublease agreement pertaining to its claimed business premises, the director expressly noted that the petitioner provided no evidence that these documents were actually executed by the landlord or owner of the premises. As discussed in the director's decision, the petitioner provided incomplete copies of the sublease agreement and lease agreement which did not include the signature pages, and provided an unexecuted copy of the lease addendum. The petitioner has had ample opportunity to submit full and complete copies of these documents and has failed to do so. The 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).

Further, the AAO notes that there are no terms in the partial sublease agreement specifying that the petitioner would have use of only a portion of the business premises leased by [REDACTED] the sublease agreement indicates that the petitioner would abide by all terms and conditions of the original lease agreement. The original agreement also indicates that the premises may be used only for retail sale of cellular telephone and tobacco products. The photographs submitted appear to show a small jewelry display in the middle of a store that primarily operates as a cellular phone and accessory store. Again, there is no evidence that the landlord has approved this use of the premises or that it is even aware of the petitioner's occupancy, as the petitioner failed to submit any document bearing the landlord's signature, and failed to submit an original letter from the owner or landlord as requested by the director.

On appeal, counsel has not addressed the deficiencies mentioned in the director's decision. Rather counsel asserts that the petitioner provided photographs and lease documents sufficient to establish that it has secured sufficient physical premises to house the office. The AAO notes that even if the petitioner had provided

evidence of a valid sublease agreement for the premises, it is unclear how the petitioner intends to operate a jewelry import and wholesale business from a small display area within a retail wireless telephone store. The photographs depict no office or storage area for the operation of such a business.

For the foregoing reasons, the petitioner has not established that it has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A). Accordingly, the appeal will be dismissed.

B. Employment in a Managerial or Executive Capacity Abroad

The second issue addressed by the director is whether the petitioner established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

In its letter dated October 14, 2009, the petitioner described the beneficiary's duties as general manager as follows:

1. Overseeing/managing various functions including Marketing, Sales and Human Resource Management.
2. Strategizing the business model and budgeting proposition, ensuring that it is implemented and helps in delivery of process excellence, improved quality services, and customer satisfaction, reduction in cost, increased revenue and profitability.
3. Managing client relationships with key accounts, assess customer satisfaction levels, challenges and explore additional business opportunities with them.
4. Responsible for the execution, follow up and sustainability of planned operating improvements.
5. Oversee activities directly related to marketing, export, import and transport of all merchandise.
6. Ensuring that all employees possess performance objectives, receiving regular one-on-one feedback and actively completing their development plans.
7. Managing the internal and external communication in a growth environment. Ensuring all communication tools, meetings, and reviews align with the attainment of functional and business goals.

The petitioner also submitted a letter dated October 8, 2009 from the foreign entity, which provides the same job duties. The letter indicates that the beneficiary has been employed by the foreign entity as general manager since 1978. The record reflects that the beneficiary was nine years old in 1978.

In the request for evidence issued on January 29, 2010, the director instructed the petitioner to provide evidence that the foreign entity has employed the beneficiary in a primarily managerial or executive capacity. Specifically, the director requested: (1) a copy of the foreign entity's organizational chart clearly identifying the beneficiary's position in the chart and all employees under his supervision; (2) a brief description of job duties, educational level and annual salaries for all employees under the beneficiary's supervision; and (3) a more detailed description of the beneficiary's duties with the foreign entity, including the percentage of time

he allocates to each of the listed duties. The director also requested copies of the foreign entity's payroll records pertaining to the beneficiary for the year preceding the filing of the petition.

In a response dated March 12, 2010, counsel stated that the beneficiary allocates 45% of his time to the duties numbered 1 through 4 above, 30% of his time to the duties numbered 5 and 6, and the remaining 25% of his time to number 7.

Counsel stated that the beneficiary supervises two employees, as follows:

— Supervisor of Marketing and Sales; manages and coordinates and directs the activities of the Sales and Marketing Executives, who are in turn responsible for the marketing and sales efforts in Pakistan; handles the operations of [the foreign entity] regarding import and export compliance; negotiates settlements between foreign and domestic shippers and contacts customs officials to effect release of incoming freight and resolve custom delays.

— Supervisor of the Manufacturing Department; oversees the design team to ensure that team adheres to deadlines; sets the monthly targets and reviews the results and passes them on to [the beneficiary]

Counsel stated that the foreign entity employs a total of 16 employees. The petitioner provided a list of sixteen names, including the beneficiary, the two supervisors, a general manager, seven designers in the workshop department, and five salesmen, two assigned to marketing and three assigned to the store. The petitioner provided each employee's monthly salary and indicated a monthly payroll of Rs. 115,000.

As noted above, the director requested that the petitioner provided the foreign entity's payroll records pertaining to the beneficiary for the year prior to the filing of the L-1A petition. The petitioner submitted as Exhibit 3 11 pages of documentation that was purported to be the foreign entity's payroll records.

The first page of documentation contains three computer-generated salary/wages slips issued by a company called [redacted]. The first salary slip reflects the October 2009 salary of [redacted] a helper in the dyeing department, who received a salary of 5,239.00. The second salary slip is for [redacted] a dyeing operator, who received a salary of 6,170 in October 2009. The third slip indicates an additional 207.00 paid to [redacted]. There is nothing in the record to suggest that this company or these individuals have any association with the beneficiary's business in [redacted].

The following 10 pages of documentation show the same computer generated salary/wages slips issued by [redacted] however, the majority of the information has been concealed, likely by correction fluid. The names of the foreign entity's employees are handwritten, along with the foreign entity's name, dates (December 2009 and January 2010), and the salaries that were listed on the foreign entity's employee list.

Whoever made the alterations to the original pay slips left the original typed gross salaries of [REDACTED] on each of the altered wage slips.

At the time of filing, the petitioner had submitted color photographs of the foreign entity. These included a photograph of the storefront with a date stamp of August 17, 2008, an interior photo of a jewelry display case, and interior photographs of room that has a desk, two chairs, two shelves and storage cabinets, one machine, and some cardboard boxes. In the RFE, the director requested additional color photographs of the foreign entity's business premises. The director requested that the photographs show the interior and exterior of all factory, production, warehouse and office spaces with equipment, merchandise, products and employees clearly visible. In response, counsel stated that "original photographs were submitted with the initial petition." The petitioner submitted copies of the photographs provided at the time of filing.

The director denied the petition after concluding that the petitioner failed to establish that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. In denying the petition, the director deemed the payroll records illegible, and emphasized that the petitioner failed to provide the requested organizational chart for the foreign entity. Accordingly, the director determined that the evidence submitted was insufficient to establish that the beneficiary supervises a subordinate staff comprised of managers, professionals or supervisors, that he operates at a senior level within the foreign entity's organizational hierarchy, or that he has subordinate staff to relieve him from providing the services of the foreign organization and supervising non-professional employees.

On appeal, counsel asserts that the petitioner has submitted sufficient evidence to establish that the beneficiary has been employed by the foreign entity in a primarily managerial capacity. Specifically, counsel asserts that the petitioner provided the requested detailed description of the beneficiary's job duties along with the percentage of time the beneficiary allocates to each of his duties. In addition, counsel notes that the petitioner provided the names, job titles and job duties of the beneficiary's direct subordinates, both supervisors, and provided a list of the foreign entity's employees as requested. Finally, counsel emphasizes that the petitioner provided a letter from the foreign entity verifying the beneficiary's job duties and his employment with the foreign company since 1978 in the capacity of general manager. Counsel asserts that "there is no reason to believe that these statements are not true and correct, especially since the Beneficiary has been employed with the foreign company for more than 30 years."

Counsel explains that the foreign entity has 16 workers and operates with two departments: the sales and marketing department and the manufacturing and design department. Counsel asserts that the beneficiary oversees these departments, as well as human resources, administration and accounting and financing. Counsel contends that the foreign entity's payroll records establish that the beneficiary "has other personnel to relieve him of the day to day duties and he does not perform these types of duties."

Upon review, the petitioner has not established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

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.*

Counsel and the petitioner have repeatedly described the beneficiary's foreign duties in broad terms that provide little insight into what he actually did on a day-to-day basis as the owner and general manager of a jewelry business. For example, the petitioner stated that the beneficiary allocated 45% of his time to "managing various functions including Sales, Marketing and Human Resources Management"; strategizing the business model and budgeting propositions"; managing client relationships and exploring business opportunities"; and holding responsibility for the execution of "planned operating improvements." The petitioner stated that the beneficiary devotes an additional 30 percent of his time to overseeing marketing, export, import and transport of merchandise and "ensuring that all employees possess performance objectives." Finally, the petitioner stated that the beneficiary was responsible for "managing the internal and external communication in a growth environment."

While these duties suggest that the beneficiary exercises the appropriate level of authority over the functions of the business, the beneficiary's specific tasks are poorly delineated and the petitioner failed to assign a percentage of time to each task. This information is critical, as the beneficiary's responsibilities for client relations and exploring business opportunities are not clearly managerial in nature. The petitioner indicates that the beneficiary will be overseeing import, export and transport operations, yet it has never claimed to have a subordinate employee responsible for these functions who would relieve the beneficiary from performing non-qualifying duties. In fact, all of the invoices and customs documentation submitted to demonstrate the foreign entity's business activities show that the beneficiary himself has personally carried jewelry to the United States on behalf of the foreign entity for delivery to a customer.

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 provide any detail or explanation of the beneficiary's activities in the course of his daily routine. 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).

The director reviewed the list of seven duties submitted at the time of filing and specifically requested that the petitioner provide a more detailed description of the beneficiary's position. In response the petitioner simply added percentages to the overly broad description that had already been reviewed and found to be deficient. 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). The AAO cannot accept an ambiguous position description and speculate as to the related managerial or executive duties to be performed. 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. *Id.* at 1108.

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining a beneficiary's claimed managerial or executive capacity, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The director requested evidence to establish the names, job titles and job duties of the employees the beneficiary supervised abroad, as well as information regarding the organizational structure of the company. Counsel asserts that the petitioner and foreign entity provided statements regarding the beneficiary's employment and job duties with the foreign entity and that "there is no reason to believe that these statements are not true and correct, especially since the Beneficiary has been employed with the foreign company for more than 30 years." Counsel further contends that the foreign entity's payroll records confirm that the beneficiary has sufficient personnel to relieve him from performing the non-managerial functions of the business.

The AAO notes that, contrary to counsel's contentions, the record presents sufficient basis to doubt the credibility of the petitioner's and foreign entity's statements regarding the staffing of the foreign entity. The Board of Immigration Appeals has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.*; *see also Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998) (noting that there is a greater need for corrobative evidence when the testimony lacks specificity, detail, or credibility).

The AAO looked to the submitted payroll records to determine if they supported the petitioner's claim that the foreign entity employs 16 workers. As discussed above, the petitioner appears to have taken an unrelated company's computer-generated payroll records and made handwritten alterations to these documents in an effort to corroborate its claim that it employs the 16 individuals named on its employee list. Doubt cast on any aspect of the petitioner's proof may undermine 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). In this case, the altered documents lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible.

The director also specifically requested photographs of the foreign business in operation, including photographs of all business areas with employees at work. The petitioner opted to resubmit photographs of a storefront and a room with no employees present. The photographs do not depict a workshop that would accommodate the eight employees purportedly assigned to that department. Any 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). The photographs did not support the petitioner's assertion that the company supports 16 employees, and there is no other corroborating evidence to support the petitioner's claims other than altered payroll records.

Absent a detailed description of the beneficiary's duties with the foreign entity and credible evidence of its organizational structure, the AAO cannot conclude that the beneficiary was primarily engaged in managerial

duties, that he supervised a subordinate staff comprised of professional, supervisory or managerial workers, that he managed an essential function of the organization, or that he was relieved from performing primarily non-qualifying duties. The fact that the beneficiary owns and manages the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of “manager” or “executive”).

Based on the foregoing, the petitioner has not established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

The petition will be denied and the appeal dismissed 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.