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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 01 297 51816 Office: CALIFORNIA SERVICE CENTER Date: JAN 0 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER: [redacted] ...ing data deleted to ...t clearly unwarranted ...n of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a diamond importer and wholesaler. It seeks to employ the beneficiary temporarily in the United States as its manufacturing manager. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel asserts that the director erred in denying the petition and submits a brief in support thereof.

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.

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.

The U.S. petitioner states that it was established in 1990 and that it is a wholly-owned subsidiary of Ramani Exports, located in Mumbai, India. The petitioner declares eight employees and $5 million in gross revenues. The petitioner seeks to employ the beneficiary for two years at a salary of $3,500 per month.

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:

> 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:

> Executive capacity means an assignment within an organization in which the employee primarily-

i. directs the management of the organization or a major component or function of the organization;

ii. establishes the goals and policies of the organization, component or function;

iii. exercises wide latitude in discretionary decision-making; and

iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petition states that the beneficiary's job abroad was primarily overseeing "operations of raw stones and diamonds division of wholesaler and manufacturer of stones." The petition also states that the beneficiary's job with the petitioning organization will be to oversee the raw stones division and be in charge of "coordinating the activities of selection of stones and analyzing cost and quality factors of the department."

On October 2, 2001, the petitioner was notified by the Service that the information thus far submitted was insufficient to render a favorable decision. The petition was instructed to submit, in part, additional evidence establishing that the beneficiary has been and would be employed in a primarily managerial or executive capacity. Specifically, the director asked that the petitioner provide organization charts for the foreign parent and U.S. subsidiary organizations, including the names, position titles and brief job descriptions of all of the employees that the beneficiary has supervised and plans to supervise.

In response to the above request, the petitioner submitted the organizational charts for both companies, a list of names of the employees whom the beneficiary has supervised abroad, and their respective salaries. However, unlike the organizational chart for the foreign entity, the chart for the U.S. company named only three employees, even though it listed a total of six job positions. Furthermore, the petitioner did not submit any job descriptions for the beneficiary's subordinates abroad and did not name any subordinates for his proposed position in the United States. The petitioner's organizational chart merely indicates the beneficiary's proposed position, but does not indicate who, if anyone, will actually be performing the non-managerial job duties of the rough diamond and manufacturing division which the beneficiary will purportedly be managing.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been and will be functioning in a managerial or executive capacity.

On appeal, counsel asserts that the director erred in concluding that the beneficiary was employed in the United States. While the wording in the denial indicates that the director was mistaken in concluding that the beneficiary has been employed by the petitioner, the fact remains that the director's analysis of the evidence of record is sound, leading to the conclusion that denial of the petition in this case was warranted. The director noted that the W-2 wage and tax statements issued by the petitioner to its employees for the year 2000 indicate that three out of four of those employees are employed on a part-time basis. The petitioner's organizational chart, submitted earlier, also fails to indicate any potential employees that the beneficiary plans to manage under his proposed managerial position. Therefore, the evidence of record fails to establish that the beneficiary would be relieved of having to perform nonqualifying duties so that he can primarily perform a managerial function, as his title suggests.

Furthermore, counsel provides the following brief description of the beneficiary's proposed duties in the United States:

> Only executive management personnel, as the Applicant, would have duties and responsibilities of recommending capital expenditures for acquisitions of manufacturing product purchases, evaluating systems, procedures and policies of company activities, and enforcing compliance with policies and governmental or import/export regulations.

Counsel also indicates that the beneficiary's duties abroad involve overseeing and controlling the work of others, a description which is supported by the long list of the beneficiary's subordinates provided in the petitioner's response to the request for additional evidence. However, the above description of the beneficiary's proposed duties is too vague and general to convey any real understanding of what the beneficiary will be doing on a daily basis or whether he will be supervising any subordinates at all. There is no clear explanation of what systems need to be evaluated, what is meant by "capital expenditures," or how the beneficiary plans to ensure compliance with policies and regulations. While the petitioner is not required to establish that the beneficiary will supervise subordinates in order to qualify for an L-1A visa classification, it must nevertheless establish that the beneficiary will be relieved from having to perform nonqualifying tasks. In the instant case, counsel has not indicated that the petitioner plans to hire subordinates for the beneficiary to supervise.

Therefore, it cannot be concluded that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing nonqualifying duties. Nor has the petitioner 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 constitute significant components of the duties performed on a day-to-day basis. Nor does the record demonstrate that the beneficiary primarily manages an essential function of the organization or that he operates at a senior level within an organizational hierarchy. 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.