

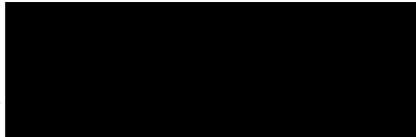
APPEALS OFFICE  
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WASHINGTON, DC 20536

U.S. Department of Homeland Security  
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N. W.  
Washington, D.C. 20536



FILE: SCR 02 209 52325 Office: TEXAS SERVICE CENTER Date: **DEC 12 2003**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:  
[Redacted]

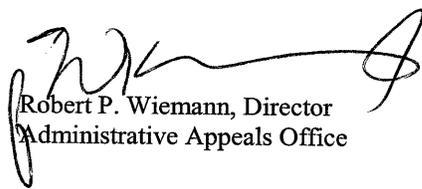
**INSTRUCTIONS:**

This is the decision 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.

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 Citizenship and Immigration Services (CIS) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as a company that specializes in the import, export and sale of paper products. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president for a period of three years. The director determined that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity primarily in an executive capacity.

On appeal, counsel disagrees with the director's determination and asserts that the beneficiary's duties will be executive in nature.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

*Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge.

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 (1)(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 with 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 serves in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Title 8 C.F.R. § 214.2(1)(14)(ii) states that a visa petition under section 101(a)(15)(L) 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 (1)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (1)(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.

According to the documentary evidence contained in the record, the petitioner was incorporated in 2001 as a company that imports, exports, and sells paper. The petitioner states that the U.S. entity is an affiliate of [REDACTED] located in Colombia. The petitioner declares three employees and declares \$283,400 in gross annual income. The petitioner seeks the continuation of the beneficiary's services as president for a period of three years, at a yearly salary of \$40,000.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily executive capacity.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) Directs the management of the organization or a major component or function of the organization;
- (ii) Establishes the goals and policies of the organization, component, or function;
- (iii) Exercises wide latitude in discretionary decision-making; and
- (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In a letter of support dated June 20, 2002, the petitioner describes the beneficiary's job duties as follows:

In this executive capacity, [the beneficiary] is responsible for all the operations of the foreign entity, including:

1. Generating business;
2. Hiring, firing, supervising employees;
3. Monitoring cash flow and managing banking relationships;
4. Entering into contracts with clients and providers; and
5. Establishing the goals and standards of the foreign entity.

As president, [the beneficiary] oversees the management of Comerinco. His specified duties are:

1. Setting and developing the goals and standards of Comerinco;
2. Monitoring cash flow and cash flow projections for Comereinco;
3. Negotiating contracts with customers and suppliers; and
4. Supervising the employees and independent contractors of Comerinco.

The director determined that the petitioner had not submitted sufficient evidence to establish that the beneficiary would be employed primarily in an executive capacity.

On appeal, counsel asserts that the director's decision was in error and that the evidence submitted by the petitioner supports a finding that the beneficiary, as president of the U.S. entity will be employed in an executive capacity. Counsel reiterates the beneficiary's past and proposed job duties identified in the letter of support. Counsel further refers to an unpublished decision. In the unpublished decision it was held that the beneficiary met the requirements of serving in a managerial or executive capacity for L-1 classification, even though he was the sole employee of the petitioning organization. Counsel has furnished no evidence to establish that the facts of the instant petition are in any way analogous to those in the unpublished decision. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, while 8 C.F.R. § 103.3(c) provides that CIS precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

On appeal, the petitioner provided an organizational chart of the U.S. entity that depicts the beneficiary as president and CEO, a

subordinate sales and marketing coordinator and administrative supervisor. The petitioner also provided a listing of employee job descriptions, responsibilities, and functions of the U.S. entity as follows:

**President, CEO:** [The beneficiary] is directly in charge to supervise all personnel in charge of the day-to-day operations of the corporation. He directly supervises two employees and is planning to hire two more people in the near future. He also has the responsibility of hiring and firing personnel, setting and developing corporate budgets, standards and goals, monitoring corporate budget, cash flow, cash flow forecast and banking relationship. He directly will develop marketing research and strategies for local and foreign markets that will be applied as corporate standards. His primary goal is to develop a company in the United States capable of continue [sic] its growing process until reach [sic] a successful point in the local US market.

**Sales and Marketing Coordinator:** [The sales and marketing coordinator] is in charge of apply [sic] the sales and marketing strategies, training sales personnel and prepare corporate reports in her division. She also coordinates sales orders and develops customer relationships.

**Purchase, Customs and Shipping Manager:** [The purchase, customs and shipping manager] is in charge of place [sic] purchase orders according to customer needs, coordinate packing and dispatch of every order. Also, she coordinates all matters relating with [sic] the exportation such as customs, and shipping with all related local shipping companies.

On review of the complete record, it cannot be found that the beneficiary will be employed primarily in an executive capacity. The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. The following duties are without any context in which to reach a determination as to whether they would be qualifying as executive in nature: responsible for monitoring cash flow, negotiating contracts, and supervising employees.

The record contains insufficient evidence to demonstrate that the beneficiary will be employed in a primarily executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that he will be directing the management of the organization or a major component or function of the organization, that he will be establishing goals and policies, that he will be exercising a wide latitude in discretionary decision-making, or that he would receive only general supervision or direction from higher level individuals. There is no evidence submitted to show the number of hours to be attributed to each of the beneficiary's executive and non-executive duties. The petitioner claims that the beneficiary will be general manager of the overall organization. However, rather than managing a major department, subdivision, function, or component of the organization, it appears that he will actually be performing the services of the business. As case law confirms, an employee who primarily performs the tasks necessary to produce a product or to provide a service is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Further, the evidence submitted by the petitioner is not sufficient to establish that the beneficiary will be managing a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties. Counsel contends that the beneficiary will be supervising two employees and independent contractors. However, the petitioner has not produced any evidence to establish that independent contractors are in any way affiliated with the U.S. entity. Neither has the petitioner established through evidence that the two employees are capable of or in a position to relieve the beneficiary from performing non-qualifying duties. Furthermore, the record does not demonstrate that the U.S. entity contains the organizational complexity to support the proposed executive staff position. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title. Based upon the evidence furnished, it cannot be found that the beneficiary will be employed in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.