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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



FILE: EAC 00 191 52341 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



DEC 17 2003

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:



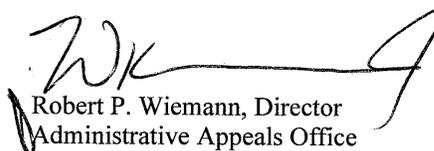
INSTRUCTIONS:

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, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner claims to be an importer and exporter of industrial equipment. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in a managerial or executive capacity.

On appeal, counsel disagrees with the director's determination and asserts that evidence submitted by the petitioner establishes that the beneficiary's duties have been and will be managerial or 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(1)(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.

The regulation at 8 C.F.R. § 214.2(1)(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. 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).

According to the documentary evidence contained in the record, the petitioner was incorporated in 1998 as an importer and exporter of industrial equipment. The petitioner states that the U.S. entity is an affiliate of Carbet, C.A., located in Venezuela. The petitioner declares one employee and claims \$77,334 in gross annual income. The petitioner seeks to extend its opportunity to employ the beneficiary as president for a period of two years, at a yearly salary of \$48,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed in a primarily managerial or executive capacity.

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

The term "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:

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 response to the director's request for additional evidence, the petitioner submitted a statement stating that the beneficiary was the sole employee. The petitioner also states that the company purchases equipment, parts, and materials, particularly electronics and communications items. Based upon the evidence received, the beneficiary appears to be a broker, earning commissions for that role. The petitioner continues by describing the beneficiary's duties by stating that sometime the beneficiary travels to Boston or New York to pick up clients, and to assist in interpreting Spanish to English and English to Spanish. The beneficiary is also said to search for equipment and parts requested by customers. Petitioner maintains that the beneficiary also obtains prices and other information needed by the customer, and sends the information to the customer by fax, phone, or e-mail so that the customer can make the purchase. The petitioner concludes by noting that the beneficiary checks sales catalogues and brochures, and sends them to salespeople in Venezuela, to be shown to prospective customers.

The director determined that the record did not establish that the beneficiary was engaged in primarily managerial or executive duties in the United States.

On appeal, counsel contends that the decision of the director is flawed in that it fails to take into account the beneficiary's primary duties which are executive in nature. No additional evidence was submitted in support of petitioner's claim.

Counsel's assertion is not persuasive. In evaluating the claimed managerial or executive duties of a beneficiary, the AAO will look first to the petitioner's description of the beneficiary's job duties. 8 C.F.R. § 214.2(1)(3)(ii). 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. Without clarification, the following duties cannot be construed as being managerial or executive in nature: responsible for purchasing equipment, parts, and materials, the delivery of purchases to customers, traveling to other states to pick up customers, providing Spanish and English translations to customers, and searching for equipment and parts requested by customers.

The record contains insufficient evidence to demonstrate that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that she has been or will be directing the management of the organization or a major component or function of the organization, that she will be establishing goals and policies, or that she will be exercising a wide latitude in discretionary decision-making. There is no evidence submitted to show the number of hours attributed to each of the beneficiary's duties. The petitioner claims that the beneficiary will be president of the U.S. entity. However, rather than managing a major department, subdivision, function, or component of the organization, it appears that she will actually be performing all the services for 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 petitioner's evidence is not sufficient in establishing that the beneficiary has been or will be managing a subordinate staff who relieve her from performing non-qualifying duties. The petitioner has not shown that the beneficiary has been or 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 has been or will be employed in a primarily managerial or executive capacity. Consequently, the appeal will be dismissed.

Beyond the decision of the director, the minimal documentation of the parent's and the petitioner's business operations raises the issue of whether a qualifying relationship between the petitioner and the foreign entity still exists, and whether the foreign entity will continue doing business during the alien's stay in the United States. As the appeal will be dismissed, these issues need not be examined further.

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.