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U.S. Department of Justice

Immigration and Naturalization Service

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



File: SRC 01 207 52167

Office: TEXAS SERVICE CENTER

Date:

JAN 10 2003

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: SELF-REPRESENTED

PUBLIC COPY

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 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

Myra L. Rosenberg
for 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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner specializes in providing children's entertainment. It seeks to continue to employ the beneficiary in the United States as its president and general manager. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, the petitioner emphasizes that the Federal Corporate Income Tax Return cited by the director only shows the last 3 months of 2000. The petitioner states that the director should have taken into account that the first L-1A visa petition was approved for the beneficiary on September 26, 2000. The petitioner submits tax forms to show that during 2001 the enterprise paid compensation to its officers. The petitioner also submits a list of the duties of the beneficiary and a breakdown of the duties that the petitioner considers to be executive and managerial.

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(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.

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

The beneficiary entered the United States in L-1A nonimmigrant status based upon a petition that was approved through June 22,

2001 to start up a new office in the United States. This petition was filed on June 22, 2001. The petitioner now seeks to extend the petition's validity and the beneficiary's stay for an additional two years.

8 C.F.R. 214.2(l)(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 (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.

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

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

The petitioner's business plan dated November 2002 indicates that the firm was incorporated on March 27, 2000 with the purpose of establishing a satellite operation of the Venezuelan company owned by the beneficiary. The plan indicates that while the company was registered in 2000, it was not until a year later (March 2001) that [REDACTED] decided to divert from his traditional operation. At that time, he included amusement and entertainment activities as part of the company's product and services. The plan shows that the beneficiary started the company operation during 2001 from his residence, but as it grew in demand and popularity, he decided to open an establishment in a retail plaza and did so at the beginning of 2002.

On appeal, the petitioner describes the beneficiary's past and proposed job duties as:

1. Primarily, he has general and active discretionary decision making of the business and affairs of the corporation;
2. Presides of all the meetings of the shareholders and at all the meetings of the Board of Directors;
3. Executes bonds, mortgages and other instruments requiring seal;
4. Signs certificates of stocks;

5. Represent all the business and interest of "Sigma Transport USA, Inc.";
6. Hiring and firing employees

PLAN: managing the short and long term financial planning

ORGANIZE: establish general guidelines which must be followed and executed by employees.

DIRECTS: manages the organization, primarily supervises and controls the work of other employees.

The record shows that the beneficiary employs three persons. His wife and two others. During the three month period ending June 30, 2001, the corporation paid total wages of \$9,000.

In this case, the descriptions of the beneficiary's job duties are insufficient to warrant a finding that the beneficiary will be employed in a managerial capacity. It appears, at most, the beneficiary will be performing operational rather than managerial duties. The petitioner has provided insufficient evidence to establish that the beneficiary will be managing or directing the management of a function, department, subdivision or component of the company.

Based upon the record, even if a total of two employees and the beneficiary's spouse were working on a full-time basis, the petitioner has not provided evidence that the beneficiary will be managing a subordinate staff of professional, managerial or supervisory personnel who relieve him from performing non-qualifying duties. The beneficiary is the individual performing the necessary tasks for the ongoing operation of the company, rather than primarily directing or managing those functions through the work of others. 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.