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

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



File: SRC-01-230-50621 Office: Texas Service Center Date:

JUN 19 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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 the regulation at 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 Bureau of Citizenship and Immigration Services (Bureau) 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 on appeal. The appeal will be dismissed.

The petitioner, a developer of specialty fast food restaurants, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its director and general manager. The director determined that the petitioner had not established that the beneficiary has been or will be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel argues that the beneficiary will be acting in an executive or managerial capacity.

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.

Regulations at 8 C.F.R. § 214.2(l)(3) state 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.

The U.S. petitioner was established in 1990 and claims to be a wholly owned subsidiary of the foreign company SOALCA, located in Caracas, Venezuela. The petitioner declares ten employees and a gross annual income of approximately \$450,000. It seeks to extend the petition's validity and the beneficiary's stay until 2007 at an annual salary of \$34,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and 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.

In response to a Service request for additional evidence dated September 17, 2001, the petitioner submitted a letter describing the beneficiary's duties, in pertinent part, as follows:

Continue to plan, develop, customize and implement organization policies and goals. *Expectation: Organization operates at peak productivity and profitability.*

Direct and coordinate promotions of products and services to develop new markets, increase share of market, and obtain competitive position in industry. *Expectation: Product or service promotions are effective, complete and timely.*

Analyze budget demands to identify areas in which reductions can be made and allocate operations budget. *Expectation: Operation budgets are cost effective and accurate.*

Confer with headquarters and administrative division and review activity, operating and sales reports to determine change in programs or operations requirements. *Expectation: Suggested changes are beneficial, accurate, timely.*

Facilitate monthly revisions to evaluate job costing and project management billable hours. *Expectation: Revisions are productive, thorough, timely.*

Direct preparation of future directives to division or department administrators outlining policy, programs or operations changes to be implemented. *Expectation: Directives are complete, clear, beneficial.*

Promote organization in industry, manufacturing or trade organizations. *Expectation: promotional efforts are professional and productive.*

Maintain a commitment to the company vision and the "spirit" of the organization. *Expectation: Company commitment is consistent and productive.*

Review activity reports and financial statements to determine progress and status in attaining objectives and revise objectives and plan in accordance with

current conditions. *Expectation: Analysis and plans are thorough, accurate, clear and beneficial.*

Interface with Headquarters' CEO to revise objective and plans in accordance with current conditions. *Expectation: Plans are thorough, accurate, clear and beneficial.*

Maintain full and final signature authority for the corporation and its bank accounts. *Expectation: Signature authority is utilized in an accurate and ethical manner at all times.*

Plan and develop industrial, labor and public relations designed to improve company image and relations with new customers, current customers and public. *Expectation: Policies yield productive and profitable results.*

Communicate clearly and directly with headquarters concerning expectations, productivity and accountability. *Expectation: Communications is ongoing, clear, concise and complete.*

Develop future employees for future advancement when possible. *Expectation: Future employee development is accessible to department employees.*

As presented before, my supervisory responsibilities at present are directed to the management and direction of functions since I am responsible for the overall direction, coordination and constant evaluation of this organization. I am carrying out supervisory responsibilities in accordance with the organization's policies and applicable laws as explained above.

The petitioner submits two separate organizational charts: (1) Organizational Chart (as of November 1, 2001) shows the beneficiary as the only employee with all potential customer business contact coming through a "computerized message system"; (2) Organizational Chart (depicting the upcoming 2 to 3 years) shows the beneficiary having two subordinate managers, an office assistant and six employees, all reporting to the beneficiary.

On appeal, the petitioner submits a letter stating, in pertinent part, that:

The beneficiary's offered position in [REDACTED] Inc., is that of the Director and General Manager. This position is parallel to that held in the company, Soalca. His duties include to supervise [sic] all aspects of the business. He plans and obtains specially

suite[d] locations for restaurants. He has obtained contracts with foodstuff suppliers. He will continue to negotiate these contracts to obtain cost-effective product[s] thus enabling the company in Venezuela and the United States to increase profit margins.

When the time comes he will ultimately be responsible to [sic] hire and initially train staff members to work for the company. With the aid of specially trained staff members, it is the belief of Soalca that the company will go far. [The beneficiary] will be granted a yearly budget from Soalca in the first three years of business to allow for expansion and reasonable profits.

The organizational chart reflects that, as of November 2001, the beneficiary has no subordinate staff, even though the petitioner has been in operation since April 2000.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The beneficiary remains the only employee of a fast food company. The description of the beneficiary's duties indicate that he is the only sales representative and admittedly performs all of the day to day operations. The record does not establish that the beneficiary has been or will be primarily managing the organization, or a department, subdivision, function, or component of the organization. The petitioner has not demonstrated that the beneficiary has been and will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel, who relieve him from performing nonqualifying duties. Nor has the petitioner, although claimed, established that the beneficiary will primarily manage an essential function within the organization. Furthermore, the record is not persuasive that the beneficiary functions 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.