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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, DC 20536



NOV 17 2003

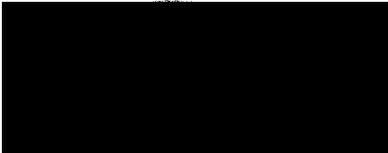
File: SRC 01 106 54405 Office: TEXAS SERVICE CENTER Date:

ON 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:



**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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO will be affirmed.

The petitioner, a company that purchases and exports automobile parts, seeks to continue to employ the beneficiary temporarily in the United States as its general manager. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel argued that the beneficiary was employed in an executive capacity.

The AAO affirmed the director's determination that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity. The AAO also found that the petitioner had submitted insufficient evidence to establish that the beneficiary's employment in the United States will be temporary. The AAO also found that there was conflicting information within the record. The AAO indicated that the petitioner had submitted a Form 1120 U.S. Corporation Income Tax Return for 1999 indicating that the U.S. company is 51% owned by a foreign entity located in "Brasil." The AAO then indicated that counsel had stated that the beneficiary directs the operation of the wholly owned United States subsidiary. The AAO determined that as the record contains insufficient documentary evidence to establish ownership and control of the U.S. entity, these conflicting claims had not been resolved.

On motion, counsel states: "All the forms, applications and evidence submitted tend to corroborate that his (the beneficiary's) employment is to last only for the duration of his L1A visa and not further. In addition, the alien maintains and owns an apartment in Brazil, hold(s) bank accounts in Brazil, and plans (sic) has not abandoned his domicile in Brazil." Based upon these assertions and review of the record, it is determined that the petitioner has established that the beneficiary's employment in the United States will be temporary.

On motion, counsel submits documentation to demonstrate a qualifying relationship between the petitioner and the parent company in Brazil [REDACTED]

[REDACTED] where the beneficiary was previously employed. The record now shows that the foreign entity owns 51% of the outstanding common stock of [REDACTED]. Based upon the evidence submitted on motion and review of the record, it is determined that the record contains sufficient documentary evidence to establish ownership and control of the U.S. entity by the foreign entity.

On motion, counsel refers to an unpublished decision involving an employee of the Irish Dairy Board. In the Irish Dairy Board case, it was held that the beneficiary met the requirement of serving in a managerial and executive capacity even though he was the sole employee of the petitioning organization. Counsel has furnished no evidence to establish that the facts of the instant case are in any way analogous to those in the Irish Dairy Board case. 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. Counsel also cites *IKEA US, Inc. v. U.S. DOJ, INS*, 48 F.Supp.2d 22 (D.D.C. 1999) but fails to explain how that decision is relevant to this case.

The petitioner's description of the beneficiary's projected job duties are fully described in the latest AAO decision dated September 23, 2002 and will not be repeated here. On motion, counsel provided the following information concerning the duties of the beneficiary.

The main functions of Mr. [REDACTED] include but are not limited to the following:

- Representing the company on rental contracts, shipping containers, and other exporting methods.
- Identify and search for opportunity for new product sales, participating to events, such as trade shows.
- Responsible for payroll.
- Training employee or subcontractors.
- *Receives directions only from the board of directors*
- Creating and maintaining computer system to comply with the main office, in order to facilitate change of information.
- Prepare and control the yearly budget.
- Approve all expenses, regular budget.
- Helps employees to manage orders: keep track of back orders, verifying computer inputs from employee on the packing list, manage purchasing and obtaining best cost price to increase sales volume.
- Manages and recommends packing process: certifying that company minimizes packing volume, to reduce cost of transportation; guarantee that the parts would arrive at its final destination without damages.
- Manage freight papers (A WB/bill of lading) weekly to be in accordance with all requirements by Brazilian customs.
- Opening and maintain accounts payable: Opening accounts with various supplies, as Nissan, Lexus, Mercedes....., obtain 30 days credit from suppliers;
- Certifying the office in Brazil would be sending cash to pay supplier on time.

The record reflects that the petitioner was incorporated on November 16, 1998 and that this petition was filed on February 15, 2001. The petitioner's 1999 yearly federal income tax return for the period ending September 30, 2000 does not support the petitioner's assertion that the beneficiary would be primarily engaged in performing executive or managerial functions as the company's general manager. For example, for the entire year tax year beginning October 1, 1999 and ending September 30, 2000, the firm only paid \$4,009 in salaries and wages and \$10,155 to its officers. After considering the record and the information concerning the duties of the beneficiary provided on motion, it is determined that the petitioner has not employed sufficient personnel to relieve the beneficiary from performing the non managerial or executive tasks required to operate the United States entity a daily basis. Without more compelling evidence, the record does not establish that a majority of the beneficiary's duties have been or will be primarily directing the management of the organization, and that he is not directly providing the services of the business. An employee who primarily performs the tasks necessary to produce a product or to provide services 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).

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 decision of the AAO dated September 23, 2002 is affirmed.