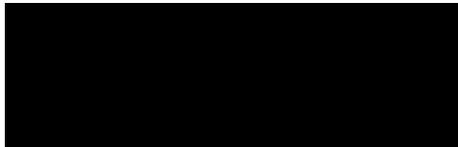


**PUBLIC COPY**

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

D7

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



**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

FILE: SRC-02-109-50179

Office: TEXAS SERVICE CENTER

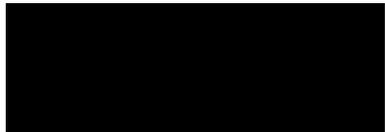
Date: **NOV 19 2003**

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for 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:



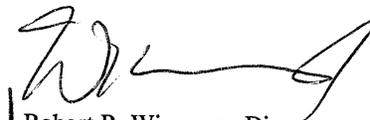
**INSTRUCTIONS:**

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 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 Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeal Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as being engaged in the service of providing haircuts to children and exporting beauty supplies to various countries in Latin America. The petitioner seeks to extend the employment of the beneficiary in the United States as general manager. In a decision dated May 29, 2002, the director denied the petition for the L-1A visa on the grounds that, as the petitioner has been doing business for more than one year, the petitioner had failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

On appeal, counsel maintains that the beneficiary oversees the management of the company, including supervising management personnel and a clerical staff. As such, counsel asserts that the requirements for an L-1 visa have been satisfied.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

Pursuant to the regulation at 8 C.F.R. § 214.2(l)(14)(ii), a visa petition involving the opening of a new office may be extended by filing a new Form I-129 and submitting the following evidence:

(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.

The AAO will address the issue of whether the beneficiary will be employed in a 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.

On the extension petition, the petitioner summarized the beneficiary's proposed duties as a general manager "in charge of supervising the various departments of the company [sic]." The letter submitted with the petition also states that the beneficiary "is in charge of supervising the various departments of the company, and with the Directors of the parent company will set policy, strategy, procedure, and goals. [The beneficiary] had full authority to hire and fire the personnel needed in the company."

In the request for additional evidence, the director indicated that based on the evidence already submitted, the beneficiary did not meet the requirements of a general manager as defined in 8 C.F.R. § 214.2(1)(1)(ii). She requested that the petitioner: (1) explain how the beneficiary meets the criteria of either manager or executive, (2) submit the names, duties and educational backgrounds of the employees whom the beneficiary supervises, and, (3) explain how the beneficiary will not engage in the day-to-day operations of the business.

In a letter dated March 7, 2002, the petitioner stated that the beneficiary manages the Administrative Department of the company and the Hair Cattery Services Department, which has one manager and two full-time employees who work under the manager. Additionally, the beneficiary "establishes goals and policies for the organization, exercises wide latitude in discretionary decision making, has the authority to hire and fire personnel, and receives only general supervision and direction from higher level executives of the parent company." The petitioner identified the individuals supervised by the beneficiary as: (1) an administrative manager, in charge of supervising the

administrative aspects of the company, such as employees, operations, and facilities, (2) the manager of the Hair Cuttery Department, who is in charge of supervising the employees of the Hair Cuttery Department, and, (3) two Hair Cuttery Department employees. All employees are high school graduates, and three have a degree in Cosmetology. The petitioner further explained that, as of the date of the letter, there were five employees in the company, rather than just three individuals employed at the time of submitting the extension request. Therefore, the beneficiary would not be engaged in the day-to-day operations of the company. Rather, the beneficiary will supervise the two departments currently in existence, and the Export Department, which is being established.

In a decision dated May 29, 2002, the director determined that the beneficiary was not performing in a primarily managerial or executive capacity because the beneficiary was not managing other professionals or managers as required in 8 C.F.R. § 214.2 (1)(1)(ii)(B). The director further noted that the petitioner had not submitted any additional evidence to prove that the employees held baccalaureate degrees or the equivalent or that they supervise other professionals.

Petitioner's counsel filed an appeal on July 11, 2002 asserting that the "[b]eneficiary oversees the administration (management) of both operating division[s] of the company. This includes supervision of a set of management personnel and an operative/clerical level below that. As such the L-1 visa requirements have been completed." Counsel also indicated that a brief and evidence would be submitted to the AAO within thirty days of the appeal. A thorough review of the file revealed no additional evidence or brief submitted by counsel after the appeal date. As it is now more than a year later, the record will be considered complete.

The evidence submitted by the petitioner is not persuasive in establishing that the beneficiary will be employed in a managerial or executive capacity. At the time of filing for the extension, the petitioner employed three individuals, including the beneficiary. The petitioner indicated in the response to the director's request for additional evidence that it plans to hire three additional full time employees in the future. However, 8 C.F.R. § 214.2(1)(3)(v)(C) provides the intended United States operation only one year within the date of approval of the petition to support an executive or managerial position. There is no provision in the regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is

ineligible by regulation for an extension. In the instant case, as the petitioner was found to be a new office, the petitioner must have been able to support a managerial or executive position by May 1, 2002, which is one year from the date of the beneficiary's initial petition approval. The petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

In examining the managerial or executive capacity of the beneficiary, the AAO will also consider the petitioner's description of the beneficiary's job duties. See 8 C.F.R. § 214.2(1)(3)(ii). In a letter submitted with the petition for an extension, the petitioner gave a very broad description of the beneficiary's job duties, indicating that she supervised the various departments of the company, had full authority to hire and fire the personnel, and would work with the parent company to set policy, strategy, procedure and goals. In addition to the duties already indicated, the petitioner further explained in its response to the director's request for evidence that the beneficiary "establishes goals and policies for the organization, exercises wide latitude in discretionary decision making, has the authority to hire and fire personnel, and receives only general supervision and direction from higher level executives of the parent company." This description is essentially a restatement of the regulations that define managerial and executive capacity. Cf. 8 C.F.R. 214.2(1)(1)(ii)(C). Neither counsel nor the petitioner has provided any specific evidence to substantiate that the beneficiary will be employed as a manager or executive. On appeal, counsel simply asserts that the beneficiary oversees the management of the divisions of the company, yet fails to identify how the beneficiary will be relieved from performing non-qualifying duties. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Therefore, the AAO cannot find that the beneficiary will be working in a managerial or executive capacity.

Beyond the decision of the director, the Articles of Incorporation designates the beneficiary as the incorporator, sole director, president, secretary and treasurer of the petitioning company. In addition, the 2001 U.S. Corporation Income Tax Return indicates that the U.S. company is 100% owned by a foreign individual. If in fact the beneficiary is an owner

or major stockholder of the petitioning organization, it remains to determine that the beneficiary's services are for a temporary period. The regulation at 8 C.F.R. § 214.2(1)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that she will be transferred to an assignment abroad upon completion of her services in the United States.

Another issue in this proceeding, also not raised by the director, is whether the petitioner has established that a qualifying relationship exists between the petitioning entity and a foreign entity pursuant to 8 C.F.R. § 214.2(1)(1)(ii)(G). As previously discussed, the petitioner's tax return directly contradicts the claim that the company is owned 100% by the alleged foreign parent company. As the appeal will be dismissed on the grounds discussed, this issue need not be addressed 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. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.