

**PUBLIC COPY**

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

DM

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass. Ave., 3rd Floor  
425 Eye Street N.W.  
Washington, D.C. 20536



NOV 21 2003

File: SRC 01 140 51545 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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 [Redacted]

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

The petitioner is an export operation that serves as a purchasing agent for its parent company, located in Bogota, Colombia. It seeks authorization to employ the beneficiary temporarily in the United States as its operations manager. The director denied the petition based upon the determination that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, the petitioner submits a statement and additional evidence in an effort to refute the director's findings.

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.

8 C.F.R. § 214.2(1)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

A) Sufficient physical premises to house the new office have been secured;

B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of

the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The U.S. petitioner states that it was established in 2000 and that it is a wholly-owned subsidiary of "Cadenas Y Correas, Ltd." The petitioner declares three employees and indicates only that it is a start-up company without including its previous year's gross revenues. It is noted, however, that the record contains the petitioner's original lease that has a commencement date of June 1, 2000. The petition was not filed until March 2001. Therefore, the U.S. entity had been present and purportedly doing business in the United States during the year 2000, despite the fact that it had been in operation for less than one year when the petition was filed and was considered a new office. The fact that the petitioner was in its start-up stage of development as of March 2001 when the petition was filed does not mean that it was not in operation and conducting business as of June 1, 2000 when its lease commenced. Therefore, the petitioner has failed to explain and provide supporting documentation for why it did not include its gross earnings for the year 2000 in the petition even though the Director specifically asked for such information. The petitioner seeks authorization to employ the beneficiary as its operations manager at an annual salary of \$35,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary 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 support of the petition, the petitioner provided the following description of the beneficiary's proposed duties in the United

States:

[The beneficiary] will serve as Operations Manager for Chains & Belts. She will be responsible for organizing and carrying out the business operations of the company. Ms. [REDACTED] will have full discretion and authority to set up the company's facilities; hire professional, as well as, lower management personnel; and ultimately, establish the core operations of the business. She will create, modify and implement policies of operation; set goals and structure the operations in conformance therewith; and continuously evaluate the overall production, efficiency and profitability of the company. This position requires an intimate knowledge of the products and the managerial expertise [the beneficiary] has attained as Marketing Manager of Cadenas.

On May 15, 2001, the Director sent the petitioner a request for additional evidence. The petitioner was instructed to submit, in part, its organizational chart, copies of its last four state quarterly reports and wage report, as well as the number of employees the beneficiary would be supervising, their job titles and duties, and, if the beneficiary would be managing an essential function, the petitioner was asked to specify which essential function the beneficiary would be managing.

In response, the petitioner submitted its organizational chart showing the president at the top of its organizational hierarchy, a secretary, an operations manager, a clerk and an accountant as the remaining positions under the president. Although asked to submit state quarterly reports, the petitioner actually submitted its federal quarterly tax return, thereby failing to comply with the director's request. The petitioner also failed to submit job descriptions for the employees it claims will be managed by the beneficiary. It is noted that where a petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, the AAO will not consider evidence submitted on appeal for any purpose. Rather, the AAO will adjudicate the appeal based on the record of proceedings before the director. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). If the petitioner desires further consideration of such evidence, the petitioner may file a new petition.

The director denied the petition, stating that the petitioner failed to provide "proof that there are any subordinate manager employees" whom the beneficiary would be managing. The director concluded that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity.

On appeal, the petitioner submits a written statement explaining that the wages on several of its quarterly federal tax returns were low because at least one of the employees was hired at the end of a

quarter. However, the petitioner submitted no evidence of that employee's date of hire to support the assertion made. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner also provided a description of duties for each of the three employees who would be supervised by the beneficiary. However, as previously stated, the petitioner's failure to provide the information in response to the director's request for additional evidence precludes the petitioner from bringing it forth on appeal. Therefore, the job descriptions of the beneficiary's proposed subordinates will not be considered.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary will be employed in a primarily managerial or executive capacity. 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. In reviewing the job titles included in the petitioner's organizational chart, it appears that the beneficiary would be supervising a secretary, a clerk, and an accountant. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel who would relieve her from performing nonqualifying duties. The petitioner has not demonstrated that it has reached or will reach a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis. Nor does the record demonstrate that the beneficiary primarily manages an essential function of the organization. Based on the evidence furnished, it cannot be found that the beneficiary would be employed primarily in a qualifying managerial or executive capacity any time in the near future. 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.