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



File: SRC-02-025-50133 Office: Texas Service Center Date: **SEP 12 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:



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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is involved in real estate development, rental, and sales. It seeks to extend its authorization 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 had been and would be employed in a primarily managerial or executive capacity or that the U.S. company is doing business.

On appeal, counsel submits a brief and additional evidence.

Regulations at 8 C.F.R. § 214.2(l)(14)(ii) state 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.

The United States petitioner was established in 2000 and states that it is an affiliate of Fabrica de Cuero Suave Cuero, located in Caracas, Venezuela. The petitioner seeks to extend the employment of the beneficiary for a three-year period at an annual salary of \$25,000.00.

The first issue to be addressed in this proceeding is whether the U.S. company has been doing business.

Title 8 C.F.R. § 214.2(l)(1)(ii)(H) states:

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

On appeal, the petitioner has submitted significant evidence that the United States company is conducting business. The evidence consists of copies of the petitioner's U. S. Corporation Income Tax forms for the year 2000 and 2001, various lease agreements, Form W-2 Wage and Tax Statements, canceled business checks, settlement business statements and other financial documents.

The record reflects that the business conducted by the United States company is regular, systematic, and continuous. Therefore, the petitioner has overcome this portion of the director's decision.

The second issue to be addressed in this proceeding is whether the beneficiary has been and will be employed in a primarily 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.

The petitioner describes the beneficiary's duties as follows:

[The beneficiary] fulfills the position described 100% of the time. It is anticipated that his time is divided as follows:

(20%) Networking with business industries in community to identify and cultivate new information sources, attend trade shows and conferences to keep abreast of the industry; Identify new markets for penetration and develop marketing strategy accordingly.

(10%) Travel to communicate with the various suppliers, distributors, clients, and potential clients.

(15%) Preparation of monthly and annual budget for the new operations and monitor finances; determination of buying, legal, inventory, insurance, technology needs of the US company.

(05%) Evaluate and review the services ultimately provided by the company to ensure it meets proper specifications as per customer, and the products to ensure conformity with standards.

(05%) maintain regular communication with the foreign affiliate company.

(25%) Monitor the activities of all employees, including the company's current secretary and sales associate, and additional employees as they continue to be hired.

(15%) Monitor supplier and distribution chains for operation.

(05%) Misc.

The record indicates that the petitioner has two employees, in addition to the beneficiary: a sales associate and a secretary.

In a letter dated October 16, 2001, the beneficiary described his duties, in pertinent part, as follows:

As General Manager, the position requires [me] to deal with our U.S. manufacturing suppliers of goods, and project what goods will be necessary for our construction efforts in the U.S. Additionally, I am ultimately responsible for all personnel decisions for the U.S. company in relation to its sales, marketing, administrative, financial, and legal operations. I have the duty of retaining, dismissing and placing all of LET'S POINT employees within the United States as is necessary, as well as overseeing lower level management. Furthermore, I ensure company compliance with all labor and employment issues.

On appeal, counsel states, in pertinent part, that:

The sales person's responsibilities include assisting [the beneficiary] in coordinating various services and documentation related to the sales and rentals of the company's newly developed homes. Under the beneficiary's supervision, he coordinates with the rental agents and with construction contractors the logistics, payment, contracts and insurance documents that need to be executed by various parties. [Named Individual's] duties encompass the true day-to-day operations allowing the beneficiary to play the true managerial and executive role in the petitioner's affairs.

[The sales person] also exercises some supervisory responsibility on [sic] the company's secretary. However, only the beneficiary has total supervisory powers over the secretary, and the beneficiary can terminate the employ[ment] of all the employees mentioned, and only the beneficiary can hire new employees.

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. Duties

described as preparing monthly and annual budgets, monitoring finances, determining buying, legal, inventory, insurance, and technology needs, evaluating and reviewing the services, maintaining regular communication with the foreign affiliate company, monitoring the activities of all employees, and monitoring supplier and distribution chains, are without any context in which to reach a determination as to whether they would be qualifying. Other duties such as acting as liaison for the foreign entity, dealing with U.S. manufacturing suppliers of goods, and projecting what goods will be necessary for construction, have not been demonstrated to be managerial or executive in nature. The use of the position title "general manager" is not persuasive.

The record as presently constituted does not reflect that the beneficiary will function at a senior level within an organizational hierarchy other than in position title. Further, the petitioner does not persuasively establish that it will employ a subordinate staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing nonqualifying duties. Counsel's statement on appeal notwithstanding, the evidence provided is not convincing in establishing that the beneficiary will not be primarily involved in performing the day-to-day functions of the petitioning organization. Based on the evidence furnished, it cannot be concluded that the beneficiary has been or will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proof 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.