

D7

Department of Homeland Security

Citizenship and immigration Services

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

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



File: SRC-02-061-53686 Office: Texas Service Center

Date:

SEP 15 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:



PUBLIC COPY

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

The petitioner, a company that imports and exports oil field equipment, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel argues that the Bureau has failed to consider the fact that the petitioner has hired two additional employees, or that it had almost one million dollars in sales primarily due to the beneficiary's efforts.

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 U.S. petitioner states that it was established in 2000 and that it is an affiliate of OTP-EQUIPOS Y TECNOLOGIA, C.A. and PERIMONT-Oficina Tecnica, C.A., located in Venezuela. The petitioner declares two employees and a gross annual income of approximately \$200,000. It seeks to extend the petition's validity and the beneficiary's stay for three years at an annual salary of \$42,000.

At issue 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:

Personnel

- . Directing and supervising employees
- . Coordinating activities of employees to effect operational efficiency and economy.
- . Hiring personnel, directing staffing, training and performance evaluations to develop and control sales program.

Marketing

- . Planning and developing industrial labor and public policies designed to improve company's image and relations with customers, employees, stockholders and public.
- . Develop new customer bases in the United States.
- . Exporting American products in the Latin America market.
- . Promoting existing and new product lines.
- . Keeping abreast of new developments in market research techniques, product lines and other relevant factors through seminars, trade shows, periodicals and trade journals.
- . Analyzing competitive products in terms of design, price and marketability as compared to company position.
- . Representing [the] company at trade association meetings to promote products sold and to purchase products.
- . Operations.
- . Directing the management and growth of the company.

. Directing the day-to-day operations and customer service matters.

. Planning, developing, and establishing policies and objectives to coordinate functions and operations between divisions and departments, establishing responsibilities and procedures for attaining objectives.

. Reviewing activity reports and financial statements to determine progress and status in attaining objectives and revising objectives and planning in accordance with current conditions.

. Directing and coordinating formulation of financial programs to provide funding for new or continuing operations to maximize returns on investments and to increase productivity.

. Serving as chairman for committees such as management, executive, sales.

. Maintaining the excellent support supplied by the company in Venezuela, providing day-to-day quotations and assistance to customers.

. Traveling to visit customers in Venezuela and other countries to promote products sales and to establish and/or maintain customer relations.

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

[The beneficiary], as President of [REDACTED] [sic], LLC, is in charge of all aspects of the company. As such, he is in charge of all the hiring and firing of personnel. As president, [the beneficiary] has acquired the service of [named individual] (sales manager) to handle all aspects of the sale, and delivery of their products and services. [The beneficiary] has also hired [named individual] (office assistant) to handle all the day-to-day business of the company as her responsibilities demonstrate. [The beneficiary] will continue to surround himself with the necessary personnel as their positions become necessary. As of this moment, [the beneficiary] has acquired the appropriate personnel to allow him to handle all the executive functions the company requires and his position demands.

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

petitioner's descriptions are lengthy there is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as directing and coordinating formulation of financial programs, planning, developing, and establishing policies and objectives, keeping abreast of new developments in market research techniques, and reviewing activity reports and financial statements to determine progress and status in attaining objectives, are without any context in which to reach a determination as to whether they would be qualifying. Other duties such as directing the day-to-day operations and customer service matters and representing the company at trade association meetings, have not been demonstrated to be managerial or executive in nature. The use of the position title of "president" is not sufficient.

The record contains insufficient evidence to demonstrate that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary has been or will be managing the organization, or managing a department, subdivision, function, or component of the company. The petitioner has not shown that the beneficiary has been or will be functioning at a senior level within an organizational hierarchy other than in position title.

Further, the petitioner's evidence is not sufficient in establishing that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing nonqualifying duties.

Based on the evidence furnished, it cannot be found 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.

Beyond the decision of the director, the petitioner has not established that a qualifying affiliate relationship exists between the U.S. and foreign entities as claimed. The petitioner claims that it is an affiliate of [REDACTED] and [REDACTED] located in Venezuela. However, the petitioner has submitted no documentary evidence establishing that the petitioner is one of two subsidiaries both of which are owned and controlled by the same parent or individual, or that it is one of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. As the appeal will be dismissed on the grounds discussed, these issues need not be examined 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.

ORDER: The appeal is dismissed.