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Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

SEP 22 2003

File: SRC-01-238-53003 Office: Texas Service Center Date:

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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 Acting Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is engaged in the import and sales of leather goods. It seeks to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity within one year of the approval of the petition.

On appeal, the petitioner rebuts the acting director's findings and submits additional documents.

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.

Title 8 C.F.R. § 214.2 (l)(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 (l)(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 United States petitioner was established in 2000 and states that it is a wholly-owned subsidiary of [redacted] located in Caracas, Venezuela. The petitioner claims that the beenficiary has been employed by the parent company as its administrative manager since 1999. The petitioner seeks to employ the beneficiary for a three-year period at a salary of $650.00 per week.

The issue to be addressed in this proceeding is whether the beneficiary will be employed in a primarily managerial or executive capacity, and whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. The acting director also noted the petitioner's failure to submit tax documents.

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 his decision, the director stated, in pertinent part, that:

> According to the evidence there does not appear to be a need for an executive position at this time and there has been no satisfactory reason given for [the] non filing of taxes.

On appeal, the foreign entity's vice-president states, in pertinent part, that:

> [CIS] did not request tax returns for the year 2001. Year 2001 ended on December 31st, 2001. The company will file its tax returns for the year 2001 [in] the first quarter of 2002, as every company does.

The record indicates that the U.S. organization was incorporated on October 10, 2000, and the present petition was filed on July 30, 2001. The petitioner's vice-president indicates that the U.S. entity had just begun to actively conduct business within the last six months, and that during that time it had no employees, therefore, it did not file any taxes. The petitioner's statements regarding the reasons for its failure to file taxes is plausible. Furthermore, regulations do not require that a new office file taxes prior to the conclusion of its initial fiscal or calendar year. The petitioner has overcome this portion of the acting director's objections.

On appeal, the foreign entity's vice-president further states, in pertinent part, that:

> We consider that our beneficiary, [named individual] has managerial and executive duties. Even if he is not supervising any employee[s] at that time. But he will be supervising managers during the next year as we stated on our proposed organizational chart.
>
> At this time he is 1) managing the Organization; 2) managing an essential function within the organization; 3) He will supervise professional managers (Bachelor Degree in Business Administration, will be required to execute such positions).
>
> He [the beneficiary] is also establishing the goals and policies of the organization.

The record is not persuasive in demonstrating that the beneficiary will be employed in a primarily executive or managerial capacity. The record contains no in-depth description of the beneficiary's duties that is persuasive in establishing that the beneficiary will be primarily engaged in managing or directing the management of a function, department, subdivision or component of the U.S. entity. Simply stating that the beneficiary is the president of the corporation, and that he will supervise professional managers, and an essential function of the corporation, without further elaboration and clarification, is not sufficient in establishing the beneficiary's executive or managerial duties. In fact, the description of duties provided are too general and vague to convey any understanding of exactly what the beneficiary will be doing on a daily basis.

The petitioner has not sufficiently established that the beneficiary will be functioning at a senior level within an organizational hierarchy. The petitioner has not demonstrated that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing the essential day-to-day functions of the petitioning company. Based on the evidence submitted, it cannot be found that the beneficiary will be employed in a primarily executive or managerial capacity, or that the U.S. operation will support a managerial or executive position within one year.

Beyond the decision of the acting director, the petitioner has not established that sufficient physical premises to house the new office have been secured, or that 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. As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

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.