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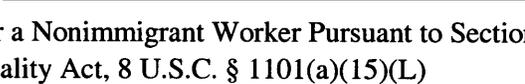


U.S. Citizenship
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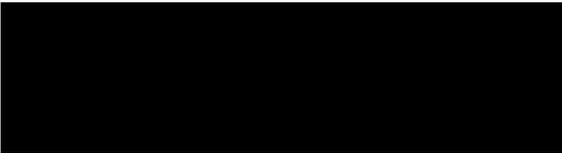


FILE: SRC 02 199 51770 Office: TEXAS SERVICE CENTER Date: **APR 12 2004**

IN RE: Petitioner: 
Beneficiary: 

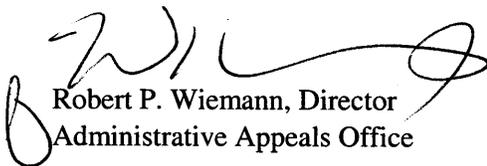
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


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 Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner claims to be an importer of furniture, handicrafts, and textiles. It 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 would be employed in a primarily managerial or executive capacity. The director also concluded that the petitioner failed to establish that the new company, La Chiquita, Inc., and the foreign entity have a qualifying relationship. On appeal, counsel disputes the director's findings and submits a statement in support of her assertions.

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.

The regulations at 8 C.F.R. § 214.2(i)(3) state 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 (I)(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.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States.

The U.S. petitioner states that it was established in 2001 and that it is a subsidiary of Jorval S.A. de C.V. d/b/a Maderas Jorval S.A. de C.V., located in Mexico. The petitioner seeks to employ the beneficiary an initial period of one year at an annual salary of \$24,000.

The first 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 Immigration and Nationality Act ("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.

In support of the petition, the petitioner provided a statement claiming that the beneficiary's proposed duties "will be to organize the U.S. business and direct all of its phases, from the importing of goods and products, developing the U.S. market, and building sales."

On June 25, 2002, CIS issued a request for additional evidence. The petitioner was asked to identify the party(s) performing the shipping and handling of the imported merchandise; a copy of the petitioner's organizational chart; and evidence indicating who is handling the petitioner's day-to-day business transactions.

The petitioner's response included the foreign entity's organizational chart naming the beneficiary as the president of the "foreign" company, i.e. the U.S. petitioner. No further information was provided regarding the organizational hierarchy or the personnel structure of the U.S. entity. The petitioner also failed to directly respond to CIS's inquiry regarding the individual(s) who handle the petitioner's shipping and handling function. Nor did the petitioner directly address the issue of who handles the petitioner's day-to-day transactions. Rather, the petitioner merely indicated in a statement, dated June 5, 2002, that the beneficiary "will be responsible for developing sales, traveling throughout the state of Florida in order to sell a fruit concentrate product produced in Mexico, and travel to and from Mexico." The petitioner also submitted a letter from the vendor manager of a flea market claiming that the beneficiary has been a vendor at that flea market since September 2001.

On October 1, 2002, the director denied the petition noting that the evidence submitted suggests that the petitioner operates as a flea market vendor and employs the beneficiary as its only sales person. The director determined that the petitioner failed to clarify who is handling the petitioner's daily operational tasks and concluded that the beneficiary does not qualify for status as an intracompany transferee.

On appeal, the petitioner states that after doing market research it decided to expand its business with another corporation named La Chiquita, Inc. In a separate statement, counsel asserts that the beneficiary is not the petitioner's only employee and submitted additional documentation, including invoices showing the petitioner's purchase of inventory, as well as a number of the petitioner's bank statements. It is noted that the invoices and the bank statements are titled in the petitioner's original name, JC Ron Enterprises. The petitioner also submitted a number of other documents resembling purchase invoices. However, these documents are written in Spanish and are unaccompanied by an English translation.

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 evidence of record suggests that the petitioner is a flea market vendor whose only employee is the beneficiary. Although the petitioner disputes this assertion on appeal, it failed to provide any evidence to support its claim. 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). Furthermore, the vendor manager of a flea market stated in a letter, dated May 22, 2002, that the beneficiary has been a vendor at that flea market since September 2001. However, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). In the instant matter, the petitioner failed to submit a comprehensive list of the beneficiary's duties. The description that was submitted is too vague to convey a real understanding of what the beneficiary does on a daily basis. The record does not establish that a majority of the beneficiary's duties will be primarily of a qualifying nature. Rather, the record indicates that a preponderance of the beneficiary's duties have been and will be directly providing the services of the business. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel or that he will be relieved from performing non-qualifying 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 will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

The second issue in this proceeding is whether the newly formed company, La Chiquita, Inc., has a qualifying relationship with the foreign entity.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(I) state:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(J) state:

Branch means an operation division or office of the same organization housed in a different location.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(K) state:

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(L) state, in pertinent part:

Affiliate means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

- (2) 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.

The record reflects that in a letter dated September 16, 2002, the petitioner stated that it has expanded its operation to include "an additional U.S. corporation in order to handle the importation of a successful fruit company, the Diaz product line, and formed an additional company specifically for these purposes." The petitioner stated that the new company, called La Chiquita, Inc., is owned by two U.S. citizens, and claimed that the petitioner will act as the holding and management company for La Chiquita, Inc. As the record indicates that the claimed qualifying relationship is between JC Ron Enterprises and the foreign entity, there is no need to explore the existence of a qualifying relationship between La Chiquita, Inc. and the foreign entity, even though the petitioning entity claims ownership interest in La Chiquita, Inc. Therefore, the director's comment in regard to this issue is hereby withdrawn.

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.