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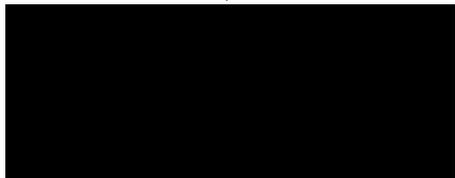


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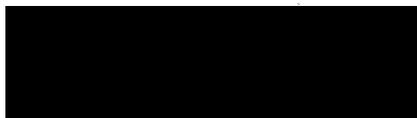
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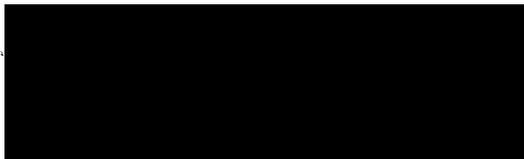
FILE: WAC 02 226 50129 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



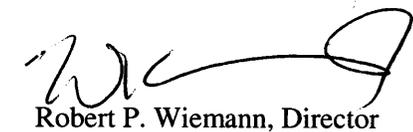
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, California 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 is a flower wholesale enterprise. 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 and denied the petition.

On appeal, counsel refutes the director's findings and submits additional documentation in support of the appeal.

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 U.S. petitioner states that it was established on January 29, 1999 and that it is a subsidiary of Forestal Manabi CIA, Ltd. (FOMA), located in Ecuador. The initial petition was approved and was valid from May 19, 2000 to May 10, 2002, in order to open the new office. The petitioner seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of \$31,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and would be employed 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 the following description of the beneficiary's job duties:

As President of [the petitioning organization], [the beneficiary] has been directing the management of the organization and/or a major component of the company. He has established the goals and policies, exercised wide latitude in discretionary decision-making in terms of defining purchasers and other related business issues. He is solely in charge of human resources and personnel selection, delegation of assignments according to capabilities, preferences and technical goals, discipline, promotions, and remuneration. He conducts performance reviews and ensures that his staff follows established procedures. . . .

[The beneficiary] is responsible for managing and directing all development activities of [the petitioner] as they pertain to domestic and international operations. [He] has managed the business with great success and has developed a book of clientele as repeating customers of [the petitioner].

On July 11, 2002, CIS issued a request for additional evidence. The petitioner was asked to provide a copy of its organizational chart naming all of its employees and a more detailed description of the beneficiary's duties including a percentage breakdown of time spent performing each duty. The petitioner was asked to indicate clearly whether the beneficiary supervises and controls the work of others and, if so, to provide their names, job titles and duties, as well as their educational levels and respective salaries. In addition, the petitioner was asked to provide several of its quarterly wage reports, its latest federal tax return, and W-2 and W-3 tax statements regarding wages paid to its employees.

The petitioner responded stating that the petitioner consists of the beneficiary as general manager and an assistant manager. The petitioner claimed that it contracts [REDACTED] to handle and forward the petitioner's flowers to its customers. The petitioner explained that its "present size and sales volume do not

permit renting the cooling and storage facilities, hiring all the personnel required and purchasing the transportation vehicles for said roses.” The petitioner also complied with CIS’s request for tax related documentation and provided the following description of the beneficiary’s duties:

[The beneficiary] is the president and general manager of [the petitioning organization]. In this capacity, he dictates short and long term policy and goals for [the petitioner]. Among the many decisions and policies made by [the beneficiary] include, but not limited to, the following:

1. Estimate product volume to be imported based on market projections;
2. Price said inventory according to projections and adjusting pricing according to market conditions;
3. Optimize product handling and cooling . . . ;
4. Establish guidelines to determine target market and seek out desirable accounts;
5. Track trends in sales and customers request for rose types to determine the market demand . . . .

Further, daily activities performed by [the beneficiary] and the percentages of time spent are as follows:

1. Review product availability . . . (10%);
2. Based on Market conditions, order product for import and sale (10%);
3. Review and adjust daily sales pricing based on market conditions and availability (15%);
4. Approve sales by [the assistant manager] and assist her in sales negotiations (25%);
5. Follow up on prospective customers through various forms of communications (10%);
6. Review credit applications of potential customers (10%);
7. Approve bill payments (5%);
8. Approve outside purchases (5%);
9. Negotiate freight rates with vendors (5%); and
10. Review inventory for reordering (5%).

On July 28, 2002, the director denied the petition noting that the petitioner failed to demonstrate how the beneficiary's daily tasks qualify as managerial or executive. The director concluded that the beneficiary has not been and will not be employed in a primarily managerial or executive capacity.

On appeal counsel asserts that in light of the relatively short period of time since the petitioner commenced its business the duties performed by the beneficiary are most crucial and can only be performed by someone in a managerial or executive capacity. 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). Therefore, regardless of the beneficiary's significant contributions to the petitioner's overall success, the petitioner must establish that the beneficiary is relieved of having to perform non-qualifying duties.

Counsel suggests that the AAO should consider the beneficiary's duties in light of the petitioner's stage of development. However, the reasonable needs of the petitioning organization do not override its statutorily imposed burden of establishing that the beneficiary performs primarily managerial duties. To the contrary, if the petitioner's early stage of development requires the beneficiary to be directly involved in running its daily operations, that fact suggests that the petitioner does not yet have a need for a primarily managerial or executive position.

Counsel further claims that the beneficiary's subordinates are not limited to the assistant manager at the California location, but rather include personnel at the petitioner's Florida office. However, none of the duties attributed to the beneficiary indicate that he directly supervises anyone other than the assistant manager who works at the same location as the beneficiary himself. Furthermore, counsel has not provided any job duties of the employees who were working at the Florida office at the time the petition was filed. Without this information, the AAO cannot determine that the beneficiary's subordinates were professional, managerial, or supervisory.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily executive capacity. Although the AAO believes that the beneficiary has been vested with a great deal of discretionary authority and decision-making power, the percentage breakdown of the beneficiary's duties indicates that a significant portion of those duties are not of a qualifying nature. Despite counsel's contentions, the record indicates that the beneficiary is negotiating sales, providing the petitioner's customer service needs, dealing with shipping details, and ordering inventory. Thus, at least 50% of the beneficiary's duties cannot be classified as either managerial or executive. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel, or primarily managing an essential function within the organization. Nor has the petitioner shown that the beneficiary will be relieved of having to perform non-qualifying duties. Based on the evidence submitted, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity.

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.