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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, APO, 20 Mass.  
425 I Street, N.W.  
Washington, D.C. 20536

**FEB 06 2004**

FILE: SRC 03 006 50157 Office: TEXAS 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:

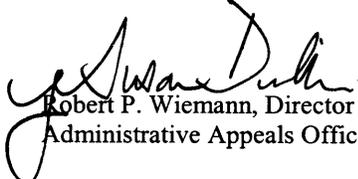
**INSTRUCTIONS:**

This is the decision 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as a distributor of paint and paint products and equipment. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel disagrees with the director's decision and submits a brief in opposition thereto.

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 regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

*Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge. 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 regulation at 8 C.F.R. § 214.2(l)(3) states 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 (1)(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.

\* \* \*

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a visa petition under section 101(a)(15)(L) of the Act 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 (1)(1)(ii)(G) of this section;
- B) Evidence that the United States entity has been doing business as defined in paragraph (1)(1)(ii)(H);
- 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.

According to the documentary evidence contained in the record, the petitioner was incorporated in 2001 and claims to be a distributor of paint and paint products and equipment. The petitioner claims that the U.S. entity is a subsidiary of 800 El Globo, C.A., located in Venezuela. The petitioner declares three employees and an estimate of \$300,000 in actual gross revenue. The petitioner seeks to extend the beneficiary's stay for three years at an annual salary of \$36,000.

The issue presented in this proceeding is whether the petitioner has established that the beneficiary 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:

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.

The petitioner stated in the petition that the beneficiary would continue to be the president of the U.S. entity, with the same duties.

In a letter of support, dated August 26, 2002, the petitioner described the beneficiary's proposed duties as:

1. Coordination, control and supervision of the managers of the corporation, their compliances with the minimum requirements of the corporation per its goals and objectives.
2. Most Authority to represent the corporation and supervise, control and direct the finances, accountability and general management of the corporation.
3. Present and create new markets projects and its achievements within the corporation standards.
4. Supervision and direction of the payroll of the corporation set the guidelines and control of the employees, its schedules, duties and compliance rules.

In a letter of response to the director's request for additional evidence, the petitioner described the beneficiary's job duties as:

[The beneficiary] is the top executive in this organization. In the position his duties are:

- a. Devise strategies and formulate policies to ensure that the objectives of the corporation [sic];
- b. Formulate policies and direct the operations of business and the corporation, in collaboration with other top executives, who are overseen by a board of directors.
- c. Meet frequently with subordinate executives to ensure that operations are implemented in accordance with these policies. He retains overall accountability even though he may be delegated several responsibilities, including the authority to oversee executives who direct the activities of all the divisions of the organization, its policies on a day-to-day basis.
- d. He is responsible for the overall performance of one aspect of the organization, such as distribution, commercialization, marketing, sales, purchasing, finance, personnel, training and the administrative services.
- e. He has the authority to hire and fire employees, coordinate their jobs through the managers of the departments.

The petitioner also provided an organizational chart of the U.S. entity, depicting the beneficiary as the president and CEO, with an administration manager and customs and shipping manager under his direction.

The director determined that the information provided by the petitioner was insufficient to show that the beneficiary's actual daily activities would be primarily managerial or executive in nature. The director stated that the U.S. entity was beyond the start-up phase and therefore could not be considered a new office. The director further stated that in order for the petitioner to qualify for a L-1A visa after the organization becomes operational, the petitioner must establish the need for an executive or managerial employee. The director concluded by stating that based upon review of the evidence, the beneficiary would have to engage in the day-to-day operations of the business, given the current business structure. The director concluded further that the current employees cannot carry out all of the functions of the company.

On appeal, counsel asserts that the petitioner has provided sufficient evidence to establish that the beneficiary will continue to be employed in the United States in a managerial or executive capacity. Counsel continues by stating that evidence of two professional employees' job responsibilities is sufficient to establish that the beneficiary will not be performing all the day-to-day operations of the business. Counsel also presents documentary evidence on appeal that has already been submitted as evidence.

On review of the record, it cannot be found that the beneficiary will be employed in a primarily managerial or executive capacity. Future projections of company expansion cannot be used to establish intercompany transferee status where, as in the instant matter, the petitioning entity is not a new office. The petitioner implies throughout the petition how the entity is still in the developing phases. However, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in the regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant case, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

Furthermore, the petitioner's description of the beneficiary's duties are not supported by documentary evidence, and does not provide sufficient information regarding his direction of the management of the petitioner. The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. Duties described as: coordinate, control and supervise managers; supervise, control and direct the company's finances; supervise and direct payroll; and set guidelines and control employees are without any context in which to reach a determination as to whether they would be qualifying as managerial or executive in nature. There is insufficient detail regarding the actual duties of the assignment to overcome the objections made by the director. The petitioner has not provided persuasive evidence to establish that the beneficiary will be managing the organization, or managing a department, subdivision, function, or component of the company, at a senior level of the organizational hierarchy.

Counsel contends that the beneficiary manages professional personnel at the U.S. entity. However, the record does not

support a finding that the petitioner will be supervising a subordinate staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties. The petitioner has failed to submit sufficient evidence to show that the job duties actually carried out by the subordinate employees are professional, managerial or supervisory in nature. In the instant case, the record does not demonstrate that the administration manager or the customs and shipping manager will have anyone under their direction to manage or supervise. While a professional degree is commendable, Citizenship and Immigration Services (CIS) must look beyond mere possession to determine whether, in fact, the duties or functions of the service qualify as professional.

The record demonstrates that, based upon the level of development achieved and the current structure of the U.S. entity, the beneficiary will continue to perform the day-to-day services of the organization. Position title alone is insufficient to establish that the beneficiary will be functioning primarily in a managerial or executive capacity.

In addition to examining the size of the enterprise and the number of staff, CIS must also take into consideration the reasonable needs of the enterprise. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

In the instant matter, at the time of filing, the petitioner had been established for more than one year. The petitioner declared three employees and an estimated gross annual income of \$300,000. The U.S. entity employed the beneficiary as president, an administration manager, and a customs and shipping manager. The petitioner did not submit sufficient evidence to establish that it employed subordinate staff members that would perform the actual day-to-day, non-managerial operations of the company. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as manager or executive. In any event, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of adequate staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant

to section 101(a)(44)(A) or (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Furthermore, the petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that he will be directing the management of the organization or a major component or function of the organization, that he will be establishing goals and policies, that he will be exercising a wide latitude in discretionary decision-making, or that he would receive only general supervision or direction from higher level individuals. There has been no evidence submitted to show the number of hours attributable, on a weekly basis, to each of the beneficiary's managerial and non-managerial duties.

Counsel claims that the beneficiary will be directing the activities of the overall organization. However, rather than directing the activities of the organization, it appears that the beneficiary will actually be performing the services of the business. The petitioner stated that the beneficiary would be "responsible for the overall performance of one aspect of the organization, such as distribution, commercialization, marketing, sales, purchasing, finance, personnel, training and the administrative services." However, this description is broad and vague and does not detail exactly what aspect of the organization's performance the beneficiary is responsible for or how he will perform the related duties. As case law confirms, an employee who primarily performs the tasks necessary to produce a product or to provide a service 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). The fact that the petitioner is in a preliminary stage of organizational development is considered, but does not relieve it from meeting statutory requirements. Based on the evidence submitted, 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.

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.