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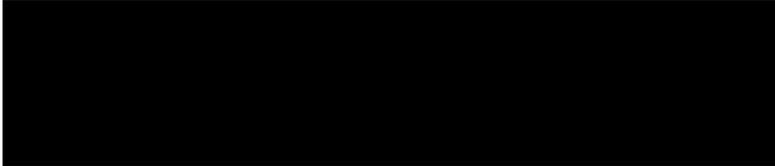
U.S. Department of Homeland Security

Citizenship and Immigration Services

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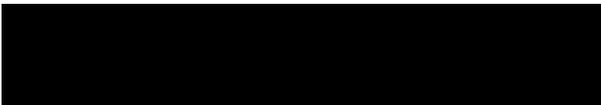
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



FEB 12 2004

FILE: SRC 01 153 53514 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:

SELF-REPRESENTED

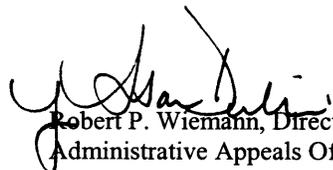
INSTRUCTIONS:

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 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 claims to be a freight forwarding business. It seeks to employ the beneficiary temporarily in the United States as a document classifier. The director determined that the petitioner had not submitted sufficient evidence to demonstrate that the beneficiary has been or would be employed primarily in a managerial or executive capacity.

On appeal, the petitioner disagrees with the director's determination and asserts that the beneficiary's duties have been and will be managerial or executive in nature.

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.

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.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization with 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 serves in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

According to the documentary evidence contained in the record, the petitioner was incorporated in 1991 as a freight forwarding business. The petitioner states that the U.S. entity is an affiliate of Express Del Norte Forwarding, S.C., located in Mexico. The petitioner declares 17 employees. The petitioner seeks to secure the beneficiary's services as document classifier for a period of three years.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary has been or 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.

In the petition, the petitioner describes the beneficiary's duties with the foreign entity as: "[M]r. Suarez is working in the traffic department of the company, in charge of inspecting all documents and classifications of the merchandise that is being shipped from our office." The beneficiary's proposed job duties are described as: "[T]o inspect all documentation and shipments being shipped from our office in Laredo, Texas."

In a letter of support, dated April 11, 2001, the U.S. entity's office manager, Elsie Wu stated:

[The beneficiary] is working in the traffic department of the company, in charge of inspecting all documentation and classifications of the merchandise that is being shipped from our office in Laredo, Texas.

[The beneficiary] has performed extremely well in all his duties and is urgently needed in the Laredo office for classifications of incoming shipments.

The director determined that insufficient evidence had been submitted by the petitioner to establish that the beneficiary has been or will be employed in a managerial or executive capacity, and thereafter, she requested additional evidence be submitted. The director stated:

Please submit the following items/information in regard to the above-referenced petition:

- 1.) Does the proposed position for the applicant include managing professional individuals or other managers? Indicate the level of authority held by the applicant.
- 2.) You stated there are 17 individuals in the company and you listed employee names and job positions. Are those listed employees at the foreign company, or will they be working at the U.S. entity?
- 3.) What managerial or executive experience, if any, has the applicant had in his employment background?

In response to the director's request for additional evidence, the petitioner's office manager, Elise Wu stated in a letter, dated May 12, 2001:

In response to your request on [The beneficiary],

1. No, his proposed position does not include managing professional indivi[d]uals or other manager [sic].
2. All 17 individuals are employees for the U.S. entity.
3. [The beneficiary] has one year experience working in the documentation-traffic dept., has no managerial experience.

The director determined that the record contained insufficient evidence to demonstrate that the beneficiary has been or will be employed primarily in a managerial or executive capacity. The director further stated that the lack of required managerial experience by the beneficiary as well as the non-managerial nature of the proposed job position renders the beneficiary ineligible to be classified as an L-1A manager under immigration law and regulations.

On appeal, the petitioner states that the Office Manager, Elise Wu misunderstood the questions asked by the director. The petitioner further states that she understood the director to ask if the beneficiary was or had experience as a manager, for which she responded no. The petitioner further states that the beneficiary is not to be a manager per sé, but that he does have managerial authority because he has two to three persons below him whom he must supervise and train to be merchandise inspectors and document classifiers. The petitioner also states that the beneficiary controls the work of other employees as an essential function of the U.S. entity, and controls the functions, its procedures, products, and/or international marketing methods. The petitioner provides no independent documentary evidence to substantiate the contentions.

The petitioner has failed to present sufficient evidence to establish that the beneficiary's job duties for the foreign entity have been managerial or executive in nature. In addition, there is no evidence in the record to establish that the beneficiary has been employed for one continuous year, within three years preceding the filing of the petition, for a qualifying organization, in a qualifying managerial or executive position. The record reflects that the beneficiary has been employed by the foreign entity as a document classifier. The position

descriptions given by the petitioner of the beneficiary's job duties with the foreign entity are general and broad. Duties described as being responsible for working in the traffic department, and in charge of inspecting all documents and classifications of the merchandise being shipped from the foreign office are without any context in which to reach a determination as to whether they would be qualifying as managerial or executive in nature. Further, there is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. In addition, evidence presented by the petitioner fails to demonstrate that the beneficiary has managed the organization, department, subdivision, function, or component of the organization. In response to the director's request for additional evidence, the petitioner stated that the beneficiary has one year of experience working in the documentation-traffic department, and that he has no managerial experience. Based upon the evidence presented, it appears that the beneficiary has been employed by the foreign entity as an employee who is responsible for inspecting all documents and classifications of merchandise being shipped from the foreign entity. The evidence does not demonstrate that the beneficiary, as a document classifier, manages, supervises and controls the work of others who can relieve him from performing non-managerial duties. Nor does the record show that the beneficiary directs the management of the foreign entity. In the absence of clarification regarding the beneficiary's job duties it cannot be concluded that he primarily performs managerial or executive duties for the foreign entity.

Furthermore, the record as presently constituted is not persuasive in demonstrating that the beneficiary will be employed by the U.S. entity in a primarily executive or managerial capacity. Based upon the evidence presented, the beneficiary's major responsibilities will be providing non-managerial and non-executive services to the U.S. entity. 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 petitioner stated that the beneficiary will be responsible for inspecting all documentation and shipments being shipped from the U.S. office. In response to the director's request for additional evidence, the petitioner stated that the beneficiary's proposed position does not include managing professional individuals or other managers. On appeal the petitioner contends that there was a misunderstanding of what the director was requesting in her request for additional evidence, and that the beneficiary does have managerial capacity and will control the work of other employees as an essential

function of the U.S. entity. Simply 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). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In review of the record presented, there has been no evidence presented to demonstrate that the beneficiary has been or will be employed in a managerial or executive capacity. Based upon the evidence presented, the beneficiary has been and will be providing a service and performing operational activities for the foreign and U.S. entities. In addition, the beneficiary's job title, "Document Classifier" does not connote executive or managerial duties or responsibilities. The evidence has not established that the beneficiary manages the foreign entity or exercises discretion over the day-to-day operations of the organization. The beneficiary's job title does not demonstrate that he serves as an executive responsible for establishing goals and policies or exercises wide latitude in discretionary decision-making within the foreign entity. The petitioner has provided no persuasive description of the beneficiary's duties that would demonstrate that he will be managing or directing the management of a function, department, subdivision or component of the U.S. company. The petitioner has not shown that the beneficiary will be functioning at a qualifying senior level within an organizational hierarchy. The petitioner has not established that the beneficiary will manage a subordinate staff of professional, managerial or supervisory personnel who will relieve him from performing the services of the corporation. Overall, the petitioner has provided insufficient evidence to demonstrate that the beneficiary has been or will be employed 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.