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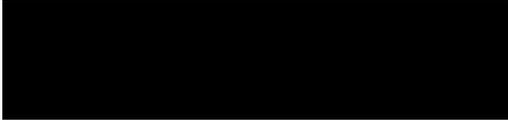
U.S. Department of Homeland Security  
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Washington, DC 20536



U.S. Citizenship  
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JAN 27 2004

FILE: SRC 02 119 53840 Office: TEXAS SERVICE CENTER

Date:

IN RE: Petitioner:  
Beneficiary:



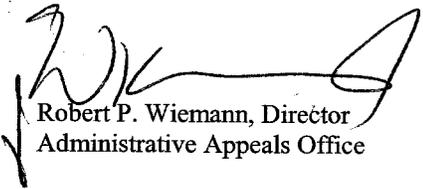
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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 nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is described as an insurance company and importer and exporter. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the evidence was not sufficient to establish that the beneficiary would be employed primarily in a qualifying 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. 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.
- (i) 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) 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 2000 as an insurance company and importer and exporter business. The petitioner claims that the U.S. entity is a subsidiary of Droguerías Electra LTDA, located in Colombia. The petitioner declares five employees. The petitioner seeks a continuation of the beneficiary's services as president of the organization at a yearly salary of \$30,000 for three years.

At issue 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.

Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101 (a)(44)(C), provides:

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization component, or function in light of the overall purpose and stage of development of the organization, component or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

In the petition, the petitioner described the beneficiary's duties as:

1. Mr. [REDACTED] currently is President of International Electra, Inc. in [sic] responsibly for day to day operation of the company, formulate all corporate plans and goals, implements all necessary policies and procedures.
2. Mr. [REDACTED] will continue to be responsible for the consolidation of the company, and will coordinate the financial, administrative, marketing and technical departments. He will examine and periodically present to the Board of Directors a report of the company, with its respective recommendations, in order to open new branches in the United States market.
3. Mr. [REDACTED] is a well know [sic] business administrator, who has over fifteen year professional experience in this field. He has also sales [sic] manager and logistic director in various companies, [sic] also he was general manager, administrative and commercial manager.

The petitioner submitted a letter dated February 28, 2002, in support of the visa petition. In the letter the petitioner stated that the beneficiary's position involves executive functions. The petitioner further stated that the beneficiary is on the U.S. company's executive committee which sets all corporate policies, and is head of the subcommittee developing strategies for purchasing and marketing. The petitioner also described the beneficiary's duties as: "[d]esigns the marketing strategies, sales policies and establishes the needs of the employees according

to the requirements of the company. Directly coordinates the relations with the principal offices of Droguerías Eléctra in Bogotá, Colombia.”

The petitioner described the duties of the four company employees as:

██████████ General Manager. Manages the entire technical part of the offices. Possesses ample experience in the insurance area, as well as handling the contacts with both the insurance and financial companies.

██████████ Book Keeper. Controls and manages the accounting books on a daily basis, bank accounts, and payments in general. Also responsible for processing and gathering all necessary information so that the accountant can elaborate the balance and financial states of the company. [Sic] Similarly, handles payments and tax obligations that correspond to the company.

██████████ Senior Sales and Marketing Agent. Responsible for the marketing method in general established by the president of the enterprise. Equally responsible for the client attention and follow up. Establishes the discount policies for the president’s approval.

██████████ Sales and Marketing Agent. Responsible for insurance sales and the maintaining of up-to-date client information for the corresponding policies issuing.

In response to the director’s request for an explanation of why the U.S. entity employee’s salaries were so low, the petitioner stated that the business was a start-up business, it is slow in developing contacts and sales, and growth was also curtailed after the September 11, 2001 attack. The petitioner further stated that due to a drop in the economy, training of the staff, and development of the company’s client base, the employee salaries were low. The petitioner stated that the beneficiary’s salary was initially subsidized by the foreign entity and has since December of 2001 been paid by the U.S. entity. The petitioner further stated that the U.S. entity anticipates growth in the future and will be expanding the workforce to include two additional sales agents. The petitioner stated that the beneficiary, the general manager, and the senior sales and marketing agent were all full-time workers and that the sales and marketing agent and bookkeeper were both part-time workers.

The director determined that the record did not establish that the beneficiary had been or would be employed in either a managerial or executive capacity.

On appeal, the petitioner asserts its disagreement with the director’s decision and contends that the evidence establishes that the beneficiary has been and will be employed primarily in a managerial or executive capacity. The petitioner further contends that the beneficiary has been employed in an executive capacity as president of the U.S. entity. The petitioner states that the beneficiary’s main functions are:

Preparation of follow-up of compliance of the sales budget, preparation and development of commercial policies, market research, design and development of market strategies for different products, advertising and promotions, customer service, development of new services, consumer studies, handling of suppliers, opening of new branches, personnel hiring, negotiate contracts with wholesalers and retailers, reports to general management.

On appeal, the petitioner also submits copies of three resumes as new evidence.

In the instant case, the petitioner has failed to show that the beneficiary will be employed primarily in an executive capacity. Although the petitioner contends that the beneficiary is responsible for the day-to-day operation of the company, there has been no documentary evidence submitted detailing how he carries out those duties. The petitioner has provided no comprehensive description of the beneficiary's or the subordinate's duties that would demonstrate that the beneficiary will be directing the management of the organization. There is no evidence submitted to show the percentage of time attributed to each of the beneficiary's executive versus non-executive duties. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). The evidence of record does not establish that the four employees have received any type of professional training or education, nor does it show that they manage or supervise a subordinate staff on a full-time basis. In addition, there is no evidence to show that the three individuals named in the resumes submitted on appeal were actually employed by the petitioner at the time the petition was filed. There is no evidence to show that the full-time workers' daily work is sufficient to relieve the beneficiary from performing non-qualifying duties. Moreover, the evidence of record demonstrates that the beneficiary continues to perform the services of the organization as sales and marketing agent, rather than directing the activities of the organization. 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). Based upon the evidence submitted it does not appear that the reasonable needs of the petitioning company would plausibly be met by the services of the beneficiary as manager or executive.

On review of the record, it cannot be found that the beneficiary will be employed primarily in an executive capacity. The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. There is insufficient detail regarding the actual duties of the assignment to overcome the issues raised by the director. The following duties are without any context in which to reach a determination as to whether they are qualifying as executive: responsible for the day-to-day operation of the organization; responsible for the consolidation of the company, and will coordinate the financial, administrative, marketing, and technical departments; and will examine and periodically present a report on the company to the board of directors.

Furthermore, the evidence presented by the petitioner fails to demonstrate that the beneficiary has managed the organization, department, subdivision, function, or component of the organization. Based upon the evidence presented, it appears that the beneficiary has been and will continue to be employed by the U.S. entity as a marketing agent and sales representative. At best, the evidence has demonstrated that the beneficiary supervises non-professional employees. In the absence of clarification regarding the subordinate employees' job duties, and the percentage of time spent performing those duties, it cannot be established that the beneficiary directs the management of the organization or that he supervises subordinates who can relieve him from performing non-qualifying duties.

The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate 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. Paraphrasing the regulations as a substitute for a day-to-day description of the beneficiary's job duties is insufficient to demonstrate the beneficiary is acting in an executive capacity. There has been no evidence presented to demonstrate what goals and policies have been and will be established by the beneficiary in his capacity. There has been no independent documentary evidence submitted to substantiate the petitioner's contention that the beneficiary will continue to manage the organization. Although the petitioner contends that

the evidence demonstrates that the U.S. entity's subordinate staff carries out the sales activities of the organization, the record does not clearly demonstrate how much time the subordinate employees devote to sales. Nor is the record clear as to how much of the beneficiary's job activities involve non-executive duties in the absence of the part-time subordinate employees. The petitioner also asserts that the beneficiary, as president, exercises complete latitude in discretionary decision making such as staffing levels required to meet the goals of the organization. However, there has been no documentary evidence produced to substantiate this claim. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In summary, the record as presently constituted is not persuasive in demonstrating that the beneficiary will be employed in a primarily managerial or executive capacity. Absent details concerning the beneficiary and his subordinates daily activities and percentage of time to be spent performing each duty, the record is insufficient to establish that the beneficiary will be performing primarily in an executive capacity. Further, the petitioner has failed to overcome the position held by the director, in that it does not appear from the record that the petitioner will be able to remunerate the beneficiary and other company employees for their services and still remain a viable business entity. *See* 8 C.F.R. 214.2(l)(14)(ii)(E). The CIS is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title. The evidence of record does not demonstrate that the U.S. entity is in a position to support a managerial or executive position, nor has it been shown that the petitioning entity possesses the organizational complexity to warrant having an executive. Accordingly, the appeal will be dismissed.

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.