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U.S. Citizenship  
and Immigration  
Services

**DI**

**MAR 13 2004**

FILE: SRC 03 238 55101 Office: TEXAS SERVICE CENTER Date:

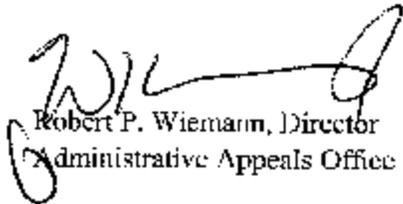
IN RE: Petitioner:  
Beneficiary:

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 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 is engaged in the business of maintenance and construction. It seeks authorization to employ the beneficiary temporarily in the United States as its president and general manager. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, the petitioner submits additional evidence in an effort to overcome the director's findings.

To establish I-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(l)(3)(v) state that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- A) Sufficient physical premises to house the new office have been secured;
- B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

The U.S. petitioner states that it was established in 2003 and that it is a subsidiary of Zapateria Cash, S.R.L., located in Venezuela. The petitioner seeks to employ the beneficiary in the United States for one year at an annual salary of \$36,000.

The first issue in this proceeding is whether the petitioner has established that the beneficiary has been employed abroad for one continuous year in the three-year period preceding the filing of the petition in an executive or managerial capacity.

On September 16, 2003, CIS issued a request for additional evidence. The petitioner was asked to provide the beneficiary's pay stubs for 2000 and 2001, as well as his Venezuelan income tax forms for 2000, 2001, and 2002 to establish his employment with the foreign entity prior to filing the petition. The petitioner was also asked to submit copies of all I-20s that were ever issued to the beneficiary.

Although the response included all of the beneficiary's pay stubs for 2001, the petitioner failed to submit any of the beneficiary's pay stubs for 2000, nor did it submit any of the requested income tax forms or the beneficiary's Form I-20s that were issued prior to 2002.

The director denied the petition noting the petitioner's failure to submit the requested income tax returns and I-20s for the years prior to 2002. The director concluded that the petitioner failed to provide sufficient documentation to establish that the petitioner had been employed abroad for one year of the three years prior to filing the petition.

On appeal, the petitioner states that the beneficiary was transferred to the United States in January 2001 to improve his English speaking skills and explains that the language courses the beneficiary took were for the purpose of the beneficiary's future employment in the United States for the petitioning entity. The petitioner also submitted the foreign entity's internally generated wage statements. While the petitioner claims that these statements were signed and sealed by a certified public accountant in Venezuela, a translation of that individual's notarized statement indicates that the accountant was not hired for the purpose of performing an audit. The accountant repeatedly stated that he was hired to apply certain "procedures." However, neither the accountant nor the petitioner has defined these "procedures" or explained what purpose they serve. Even though the petitioner has submitted the beneficiary's pay stubs dating back to 2000, all of the pay stubs were internally generated by the foreign entity. The petitioner still has not submitted any of the requested foreign tax forms, which would support the claim that the beneficiary was employed by the foreign entity within the time period specified in 8 C.F.R. § 214.2(l)(3)(v)(B). It is noted that failure to submit requested evidence, which precludes a material line of inquiry, as the petitioner did in the instant case, shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14). Furthermore, the beneficiary's additional Form I-20s that were submitted by the petitioner on appeal merely support the director's determination that the beneficiary entered the United States repeatedly as an F-1 student within the three years prior to filing the instant petition. In light of the beneficiary's entries into the United States in 2001 and 2002 as an F-1 student, the AAO concludes that the petitioner has failed to establish that the beneficiary was employed as a manager or executive abroad for one continuous year in the three-year period preceding the filing of the petition.

The other issue in this proceeding is whether the petitioner established that the foreign entity funded the petitioner. In CIS's request for additional evidence, the petitioner was instructed to submit documentation to establish proof that the foreign entity paid for the petitioner's stock. The petitioner was informed that supporting evidence could include wire transfers, stock purchase agreements, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest. As properly noted by the director in the denial, the petitioner's submission of photocopied bank statements showing a certificate of deposit (CD) totaling over \$65,000 does not establish that the foreign entity funded the petitioning operation.

On appeal, the petitioner has submitted a wire transfer tracking document, which shows that the foreign entity was the originator of a wire transfer in the amount of \$65,000. However, the tracking document shows the beneficiary, not the petitioner, as the recipient of the money. Therefore, none of the documentation submitted by the petitioner establishes that the foreign entity paid for its ownership of the petitioner's stock.

Beyond the decision of the director, the description of the beneficiary's duties abroad as provided by the petitioner does not establish that the beneficiary was employed in a qualifying managerial or executive capacity. However, as the appeal will be dismissed based on the grounds discussed above, this issue need not be further addressed at this time.

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.