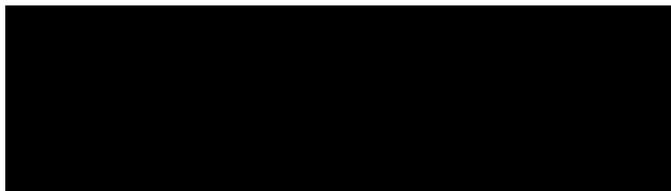


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

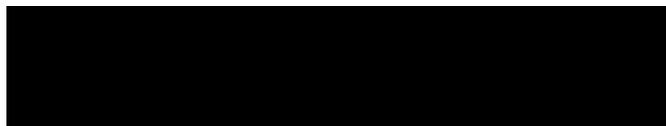


U.S. Citizenship
and Immigration
Services



FILE: SRC 03 236 50030 Office: TEXAS SERVICE CENTER Date: **MAR 31 2004**

IN RE: Petitioner:
Beneficiary:

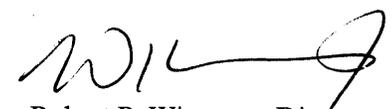


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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

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**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 customs brokerage and international freight forwarding business. 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 has been and would be employed in a primarily managerial or executive capacity.

On appeal, the petitioner disputes the director's findings and submits additional documentation in support of its claims.

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.

Pursuant to 8 C.F.R. § 214.2(l)(14)(ii) 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 (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (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.

The U.S. petitioner states that it was incorporated in 2000 and that it is a subsidiary of Atlantic Forwarding Service, located in Uruguay. The initial petition was approved and was valid from August 30, 2002 to August 29, 2003, 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 \$63,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be employed primarily 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.

The petitioner failed to provide a description of the beneficiary's job duties in support of the initial petition. In response to CIS's subsequent request for additional evidence, the petitioner provided a list of duties for the beneficiary. The description suggests that the beneficiary's job consists of the following components:

Information and Communication

The President is the spokesperson for anything regarding the Company Policy. In all Communications, the President will reflect the goals, values, and policies of the Organization. [sic]

Operations

FINANCIAL MANAGEMENT

The President will develop, administer, and reconcile the President's Budget. [sic]

STRUCTURE AND PROCESS

The President is responsible for on-going examination of operation's [sic] structure And [sic] process as well as making policy recommendations for solutions, improvements, And [sic] operations changes. The President is responsible for the development and Maintenance [sic] of a manual of existing and new operations procedure and policy. The President will develop and distribute guideline changes affecting operations.

COMMUNICATION

The President will maintain lines of communication with coordinators, Standing [sic] committees and Fair [sic] membership and help facilitate a Fair-wide [sic] network of Communication. The President will coordinate the fair evaluation meeting and Prepare [sic] management report for the annual meeting. The President will Attend [sic] all [Board of Directors] BOD, budget and Financial [sic] Planning [sic] committee meetings. The President Will provide written monthly reports to the BOD and an oral monthly report At [sic] the BOD meetings. [sic]

The director denied the petition noting that after being incorporated for over two years the petitioner still has only two employees. While size cannot be the sole consideration in determining eligibility for status as an L-1A manager or executive, the director can and should consider the size of the petitioner's personnel for the purpose of establishing whether the petitioner has a sufficient staff or outside contractors to relieve the beneficiary from performing non-qualifying duties. In the instant case, the petitioner claims that it hires contractors to handle certain brokerage, freight, and shipping services. However, no evidence has been submitted to allow the AAO to conclude that contractors were hired as the petitioner claims. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Consequently, it remains unclear who has been and will be performing the daily, non-qualifying tasks.

The petitioner asserts on appeal that the director erred in determining that its annual income is under \$140,000 and claims that its income is closer to \$220,000. However, the director's determination was based directly on information provided by the petitioner in part five of the petition where the petitioner claimed that its annual gross income totaled \$135,000, not \$218,000 as claimed on appeal. As stated above, the petitioner's assertions, without documentary proof, are insufficient for the purpose of meeting the burden of proof in these proceedings. *Id.*

The petitioner also states that it is a new business that did not commence operation until the beneficiary arrived in August 2002. Accordingly, the regulations at 8 C.F.R. § 214.2(l)(3)(v)(C) allow the petitioner one year from the date the petition was initially approved to establish that it can sustain a managerial or executive position. In the instant case, the petition was approved in August 2002. Therefore, the petitioner had functioned for the allotted one year at the time it filed the petition to extend the beneficiary's stay. Despite that fact, the petitioner has not submitted sufficient evidence to establish that it can now support a managerial or executive position. The petitioner states on appeal that one of the beneficiary's most significant duties is to

provide customer service. However, it is noted that 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 of Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). The petitioner's continued need to have the beneficiary performing non-qualifying duties, such as customer service, suggests that the petitioner has not reached a stage of development where it can allow the beneficiary to concentrate primarily on managerial or executive duties. There is no law or regulation that allows a petitioner longer than the one-year period discussed above in which to establish the need for a primarily managerial or executive position.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The fact that an individual manages a small business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. The record does not establish that a majority of the beneficiary's duties have been or will be primarily directing the management of the organization. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel, or that he will be relieved from performing non-qualifying duties. The petitioner has not demonstrated that it has reached a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis. Nor does the record demonstrate that the beneficiary primarily manages an essential function of the organization or that he operates at a senior level within an organizational hierarchy. Based on the evidence furnished, it cannot be found that the beneficiary has been or 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.