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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

[Redacted]

FILE: SRC 02 112 52849 Office: TEXAS SERVICE CENTER Date: **MAR 31 2004**

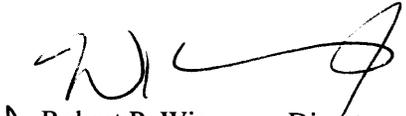
IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:  
[Redacted]

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

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

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**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 claims to be engaged in engineering and construction projects. It seeks authorization to employ the beneficiary temporarily in the United States as its executive engineering director of operations. The director denied the petition based on the following conclusions: 1) the petitioner failed to obtain sufficient premises to house its business; 2) the U.S. operation will not support an executive or managerial position within one year of approval; 3) the beneficiary was not employed abroad in a primarily managerial or executive capacity; and 4) the beneficiary's position in the United States would not be temporary.

On appeal, counsel disputes the director's findings and submits a brief in support of her assertions.

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 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 first issue in this proceeding is whether the petitioner secured sufficient premises to house its operation. The director determined that the lease submitted by the petitioner was not signed by a representative of the

U.S. corporation. However, a thorough review of the document in question indicates that the lease was signed by the landlord and by the beneficiary in his capacity as the petitioner's representative. Although the very bottom of the lease was cut off, the beneficiary's signature is clearly legible. On appeal, the petitioner also submitted a copy of the following year's lease, thereby indicating that the petitioner maintains the previously leased premises. Therefore, the petitioner has overcome this portion of the denial.

The next issue in this proceeding is whether the foreign entity has the financial ability to remunerate the beneficiary and commence doing business.

On May 11, 2002, CIS issued a request for additional evidence asking the petitioner to submit, among other documents, evidence that the foreign entity is doing business and is able to pay the beneficiary's salary and do business in the United States.

The petitioner's response included statements of the foreign entity's bank account and several of its invoices. None of these documents were accompanied by English language translations nor were any of the foreign currency amounts translated into U.S. currency. However, upon reviewing the current exchange rate the AAO is able to conclude that approximately 1,920 Venezuelan bolivares is equivalent to one United States dollar. In light of the current exchange rate the documentation provided by the petitioner indicates that the foreign entity had less than \$6,000 in assets and a taxable income of approximately \$1,000 in the year 2000. Based on these monetary figures, the AAO concludes that the foreign entity does not have sufficient funds to remunerate the beneficiary and enable the petitioner to commence doing business in the United States.

The third issue in this proceeding is whether the petitioner has established that the beneficiary was employed abroad in a primarily 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.

In support of the petition, the petitioner stated that the beneficiary had been employed with the foreign entity since 1985 in the position of engineer executive director in charge of the "Department of Electrical, Mechanical, Air Conditioning and General Contracting of the Company." The petitioner also indicated that the beneficiary has had "several professional and clerk [sic] employees under his supervision."

Although the above description of duties was deficient the director failed to request additional information (such as a more detailed description of the beneficiary's job duties abroad) prior to denying the petition. Nevertheless, the director was clear in explaining in the denial what the petitioner was expected to provide with respect to the beneficiary's job duties abroad. The petitioner was therefore given the opportunity to provide the necessary information regarding the beneficiary's job duties on appeal. Although the petitioner discussed the beneficiary's proposed duties in greater detail, it did not do the same regarding his job duties abroad. Counsel merely reaffirmed the petitioner's claim that the beneficiary has been employed abroad in a qualifying position and stated that the beneficiary has been "making policies and taking decision [sic] for the organization." However, 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).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed abroad in a primarily managerial or executive capacity. Although given the opportunity on appeal, the petitioner did not provide a comprehensive description of the beneficiary's routine duties abroad. The record does not establish that a majority of the beneficiary's duties were primarily directing the management of the organization. Nor has the petitioner demonstrated that the beneficiary was primarily responsible for supervising a subordinate staff of professional, managerial, or supervisory personnel or that he was somehow relieved from performing non-qualifying duties. Simply stating that the beneficiary has been employed in a managerial or executive position and providing a managerial or executive title for his job overseas does not determine that his job duties were primarily those of a manager or executive. Based on the evidence furnished, it cannot be found that the beneficiary has been employed primarily in a qualifying managerial or executive capacity.

The final issue in this proceeding is whether the petitioner has established that the beneficiary's employment will be temporary.

The regulations at 8 C.F.R. § 214.2(l)(3)(vii) state the following:

If the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and evidence that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States.

In the instant case, there is no indication, either from the petitioner's statements or from the documentation on record, that the beneficiary owns any shares of the petitioner's stock. Rather, the petitioner indicates that it is a subsidiary of the foreign entity of which the beneficiary does not appear to have any ownership interests. Therefore, this issue is irrelevant in the instant proceeding and cannot be used as a ground for denying this petition. Nevertheless, the appeal will be dismissed based on the grounds discussed above.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish its ownership and control. Although it claims to be a subsidiary of the foreign entity, it has provided no documentation to support this claim. However, as this appeal will be dismissed on the grounds as discussed above, this issue need not be addressed further.

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.