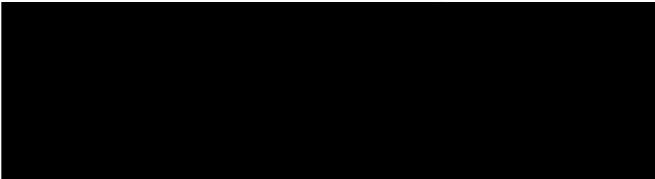


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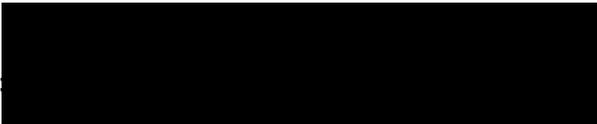
U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
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Services

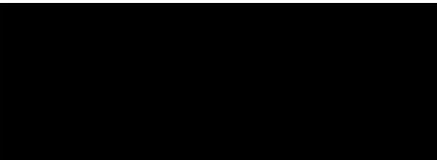


FILE: SRC 02 098 53223 Office: TEXAS SERVICE CENTER Date: **MAR 31 2004**

IN RE: Petitioner: 
Beneficiary

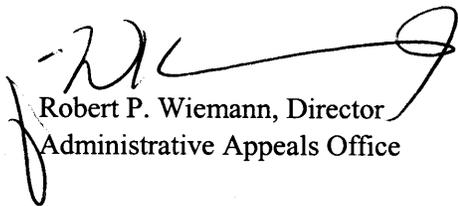
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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 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 an importer and exporter of computer equipment, parts and services. It seeks to employ the beneficiary temporarily in the United States as its general director. The director determined that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in a managerial or executive capacity.

On appeal, counsel disagrees with the director's determination and asserts that evidence submitted by the petitioner establishes 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)(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 (l)(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 within 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 services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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.

According to the documentary evidence contained in the record, the petitioner was incorporated in 1994 as an importer and exporter of computer equipment, parts and services. The petitioner claims that the U.S. entity is a subsidiary of RC Izquierdo S.A., located in Mexico. The petitioner claims to have two employees and \$10,000.00 in gross annual income. The petitioner seeks to employ the beneficiary as its general director for a period of two years, at an hourly salary of \$20.00, which equates to an annual salary of \$41,600.00.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and 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.

The petitioner states that the beneficiary's proposed duties for the U.S. entity entail the general direction and supervision of merchandise to be sold, import and export, administration and supervision of all personnel, and supervision of international sales.

The petitioner described the beneficiary's employment abroad by stating that he exercised broad discretion over day to day operations and established standardization goals and devised the appropriate means to achieve these goals in accordance with the foreign entity's policies for the importing and exporting of goods and products. The petitioner also described the beneficiary's duties as follows:

Since his entry into our subsidiary company, RC Izquierdo S.A. de C.V., in 1994, [the beneficiary] has performed in his current position of general director. He conducts performance reviews and ensures that his staff follows corporate procedures. He is also in charge of looking for vendors and consolidating our merchandise in San Antonio, Texas, as well as supervising all technical personnel. [The beneficiary] has experience in international buys and political functions and supervises merchandise to be sold, imported and exported. He also has the authority to fire and/or hire employees coming into our company. [The beneficiary] is responsible for managing and directing all classifications of international trade merchandise, which includes import and export of goods and products.

In a translated letter dated December 7, 2001, the petitioner described the beneficiary's proposed duties as:

- Administration and Installation of our company
- Buying merchandise for our company in Mexico
- Looking for buyers and consolidating buys in San Antonio, Texas to be exported into Mexico

The director determined that the evidence initially submitted by the petitioner was not sufficient to establish the beneficiary's eligibility as an intracompany transferee and thereafter requested that the petitioner submit a definitive statement regarding the employment of the beneficiary at the U.S. entity, including:

- Position title
- List of all duties
- Percentage of time spent on each duty, and

-Number of subordinate managers and all other employees who work for the U.S. based company and state their job titles.

The director also requested that the petitioner submit a copy of the 2000 and 2001 corporate income tax return for the U.S. entity.

In response to the director's request for additional evidence, the petitioner resubmitted a copy of the letter in support of the petition, which contained a description of the beneficiary's job duties. The petitioner also submitted a copy of the U.S. entity's 2001 Corporate Tax Return and stated that because the company did not do business in 2000, no tax returns were filed.

The director determined that the record did not establish that the beneficiary's duties would be primarily those of a bona fide manager.

On appeal, the petitioner's representative contends that the decision of the director is incorrect and that the evidence establishes that the petitioner will be employed by the U.S. entity primarily in a managerial or executive capacity. The representative further states in reference to the beneficiary's proposed duties:

Mr. Izquierdo manages the organization by being in charge of foreign sales and main [sic] function is to increase the purchases on the U.S. side and to expand their sales or clients that are on the Mexican side. . . . because he is in a managerial position, he controls a specific function of the business that deals directly with the sales to the customer in a foreign company primarily in Mexico. . . . At the present time, there are no new employees to supervise at [t]he company in the U.S. side, but that is his main function to increase sales so that 8-10 managerial employees can come into the business, which he will be directly supervising and he will have the authority to hire and fire. Although the company in the U.S. was established in 1994, it is now getting off the ground and this company transferee will recommend those actions as well as other personnel actions and who [sic] exercises discretionary authority over the day-to-day operations.

The reason there are no payroll deductions and no money spent on salaries, wages or compensation of employees is because the parent company in Mexico is providing this support.

In review of the record, the evidence submitted is insufficient to establish that the beneficiary will be employed by the U.S. entity in a managerial or executive capacity. In evaluating the claimed managerial or executive duties of a beneficiary, the AAO will look first to the petitioner's description of the beneficiary's job duties. 8 C.F.R. § 214.2(l)(3)(ii). 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 objections of the director. The petitioner failed to comply with the director's requests for additional evidence regarding the U.S. entity's employee's status.

The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that he will be directing the management of the organization or a major component or function of the organization, that he will be establishing goals and policies, or that he will be exercising a wide latitude in discretionary decision-making. There is no evidence to show that there will be any subordinates for the

beneficiary to manage. The petitioner did not provide an organizational chart depicting the U.S. entity's organizational hierarchy. The petitioner's representative states on appeal: "At the present time, there are no new employees to supervise at [t]he company in the U.S. . . ." Although the representative states on appeal that employees' salaries are paid by the parent company, thus explaining the reason why the U.S. entity's records do not reveal any payroll deductions, there has been no independent documentary evidence submitted to substantiate this claim. 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). There is no evidence submitted to show the number of hours attributed to each of the beneficiary's duties. The petitioner claims that the beneficiary will be general director of the U.S. entity. However, rather than managing a major department, subdivision, function, or component of the organization, it appears that he will actually be performing all the services for the business. 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 evidence submitted by the petitioner is not sufficient in establishing that the beneficiary will be managing a subordinate staff who will relieve him from performing non-qualifying duties. In the instant case, the petitioner has failed to provide evidence to establish that the U.S. entity currently employs anyone. The evidence in fact shows that the U.S. entity did not conduct business in 2000. The evidence of record also establishes that the petitioner realized gross receipts or sales for 2001 in the amount of \$9,707. Although it is stated on appeal that the petitioner realized \$22,800 in sales from January through August 2002, only \$1,970 had been realized in sales at the time the petition was filed. It is noted in the record that the petition was filed February 4, 2002. There has been no evidence provided to establish that the U.S. entity will be able to remunerate the beneficiary for his services. Neither has there been any evidence presented to show that the foreign entity will be in a position to remunerate the beneficiary for his services to the U.S. entity. In addition, the record lacks evidence to show that the U.S. entity is in a position to support a managerial or executive position, or that the entity does, in fact, need a manager or executive to conduct its operations at its current stage of development.

The petitioner has failed to establish that the beneficiary will be primarily managing a function of the organization. The petitioner's representative states on appeal that the beneficiary will control the sales function of the U.S. entity and that his main function is to increase sales so that 8-10 managerial employees can be hired and managed by him. The beneficiary's job descriptions depict an individual who will be in charge of the day-to-day services of the organization, not that of a functional manager. When managing or directing a function, the petitioner is required to establish that the function is essential and the manager is in a high-level position within the organizational hierarchy, or with respect to the function performed. The petitioner must demonstrate that the executive or manager does not directly perform the function. Although the petitioner's representative asserts that the beneficiary will be managing an essential function of the U.S. entity by overseeing the overall operations of the organization, and by managing the sales function, the record does not demonstrate that the beneficiary will be primarily managing or directing, rather than performing, the function. The petitioner has not established that there will be qualified employees to relieve the beneficiary from performing the function of the overall operations. Absent details concerning the employees' position descriptions, daily activities, and percentage of time spent performing each duty on a weekly basis, the record is insufficient to establish that the beneficiary will be managing rather than performing the function.

Furthermore, the petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that he will be directing the management of the organization or a major component or function of the organization, 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. There has been no independent documentary evidence presented to demonstrate in detail what goals and policies will be established for the U.S. entity by the beneficiary in his capacity. The record indicates that the beneficiary's subordinates will carry out the sales activities of the U.S. organization, but the record does not support a finding that any subordinates are employed on a full-time basis by the U.S. entity. Nor is the record clear as to how much of the beneficiary's job activities will involve non-executive duties in the absence of the subordinate workers. The petitioner's representative also asserts that the beneficiary, as general director, will exercise complete latitude in discretionary decision making such as hiring and firing staff, which is required to meet the goals of the organization. However, there has been no documentary evidence produced to substantiate this claim.

Likewise, there has been no evidence submitted by the petitioner to establish that the beneficiary has been employed by the foreign entity in a managerial or executive capacity.

In the petition, the petitioner stated that the beneficiary's duties for the past three years entailed the administration and installation of the corporation, the purchase of merchandise from the subsidiary company, a search for vendors, and consolidation of merchandise in San Antonio, Texas.

In a translated letter dated December 7, 2001, the petitioner described the beneficiary's duties abroad as:

- General direction and supervision
- International buys and political functions
- Supervision of technical personnel
- Supervision and administration of personnel

The petitioner also presented an untranslated organizational chart depicting the foreign entity's structure.

In the instant matter, there is no evidence to show the percentage of time spent by the beneficiary performing managerial versus non-managerial duties for the U.S. entity. *See Ikea US, Inc. v. US Dept of Justice, INS*, 48 F.Supp.2d 22, 24-5 (D.D.C. 1999) (requiring the petitioner to provide adequate documentation). There has been no evidence presented to substantiate the petitioner's claim that the beneficiary "supervises over 25-30 employees." The petitioner submitted an untranslated copy of the foreign entity's organizational chart in support of its contention. However, the untranslated document submitted is insufficient to show that the beneficiary managed or supervised employees who could relieve him from performing non-qualifying duties or who performed the functions of the organization. 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to the CIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Without a translation the CIS cannot find that the documents submitted support the contention that the beneficiary managed or supervised subordinate employees. Neither has the record established that the beneficiary has been functioning at a senior level within an organizational hierarchy other than in position title.

In summary, the petitioner has not submitted sufficient evidence to establish that the beneficiary has been or will be employed primarily in a managerial or executive capacity.

Beyond the decision of the director, the petitioner has not shown whether a qualifying relationship between the petitioner and the foreign entity still exists, and whether the foreign entity will continue doing business during the alien's stay in the United States. As the appeal will be dismissed on other grounds, these issues need not be examined 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.