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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]

MAR 31 2004

FILE: SRC 03 006 51138 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

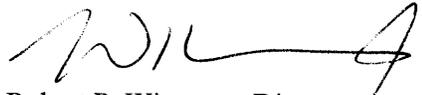
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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

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prevent clearly unwarranted
invasion of personal privacy**

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DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, Florida Softcom Corp., states that it is an affiliate of a Chilean company, Softcom Chile. The petitioner imports and exports computer products. The U.S. entity was incorporated in the State of Florida on March 9, 2001. In November 2001, the U.S. entity petitioned CIS to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A). CIS approved the petition as valid from November 23, 2001 through October 4, 2002. The petitioner now endeavors to extend the petition's validity and the beneficiary's stay for three years. The petitioner seeks to employ the beneficiary's services as the U.S. entity's vice-president at an annual salary of \$27,000.

On September 22, 2003, the director determined that the beneficiary did not qualify as a manager; consequently, the director denied the petition.

On appeal, counsel asserts that the beneficiary's proposed duties are primarily managerial and submits additional evidence in support of this contention.

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 meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

In relevant part, the regulations at 8 C.F.R. § 214.2(l)(3) state 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.

In this matter, the petitioner asserts that the beneficiary will only perform managerial duties. 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.

When examining the managerial capacity of the beneficiary, CIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Initially, in an October 2, 2002 letter submitted in support of Form I-129, the petitioner described the beneficiary's proposed duties:

She will be responsible for hiring and firing authority over employees; full decision-making authority over administrative decisions, financial decisions involving staffing and operational expenses and activities; also responsible for the implementation of growth directives and coordination of personnel and personnel policy in general. She also has had authority over the purchasing department as well as over accounts payable and accounts receivable.

The director determined that the above descriptions were inadequate to establish that the beneficiary would primarily be performing managerial duties. Consequently, on November 15, 2002, the director issued a request for evidence. Specifically, the director stated: "Described the employees currently employed by the petitioner and the duties of each. How do you propose that [the beneficiary] will qualify as a Vice-President/Manager on the extension . . . of this [n]ew [o]ffice [petition]?"

The U.S. entity responded on February 13, 2003:

The [United States] office now has four part-time employees: Oscar Guevara, Carlos Guevara, Luis Gomez and Aliro Hervia. [Oscar] Guevara manages sales. [Aliro] Hervia is a salesman. Luis Gomes and Carols Guevara are technicians. The office plans to grow and will have employees that will answer directly to [the beneficiary], particularly in purchasing and sales. Al [*sic*] four would report directly to [the beneficiary] initially and once the company has grown they would report to their respective managers and [the beneficiary] would oversee the managers. This is how [the beneficiary] will qualify for extension after the initial year of eligibility.

On appeal, counsel submitted an October 20, 2003 "expert opinion evaluation" from Dr. Jonatan Jelen. The evaluation recited the beneficiary's proposed duties:

- Hire and fire employees;
- Make administrative decisions, financial decisions involving staffing, and financial decisions regarding operational expenses and activities;
- Implement growth directives;

- Coordinate personnel and general personnel policy;
- Manage the purchasing department;
- Manage accounts payable and accounts receivable; and
- Manage the site manager, who supervises the sales department.

Based on the above duties, the evaluator concluded, "The American subsidiary requires [the beneficiary's] leadership skills and expertise, in order that the subsidiary be able to begin profitable operations." CIS may, in its discretion, use statements submitted as expert testimony as advisory opinions. However, when an opinion is not accord with other information or is questionable for any reason, CIS is not required to accept the opinion. Alternatively, CIS may give less weight to the testimony. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As will be discussed in detail below, the record does not support the management expert's opinion.

The duties listed above are too broad and nonspecific to convey an understanding of the beneficiary's daily activities. For example, the job descriptions present the proposed duties as including full decision-making authority over administrative decisions, implementation of growth directives, financial decisions involving staff and operational expenses and activities, and coordination of personnel and personnel policy. The petitioner did not, however, define the terms "administrative decisions," "growth directives," "operational expenses and activities," and "personnel policy." Additionally, the proposed duties generally paraphrase the statutory definitions of "managerial" and "executive" capacity. See sections 101(a)(44)(A)(i), (iv) and 101(a)(44)(B)(iii) of the Act. For instance, the planned tasks include "hiring and firing authority" and "full decision-making authority."

Going on record without supporting documentary evidence is insufficient for the purpose of meeting the burden of proof in these proceedings. *Ikea US, Inc. v. INS*, 48 F. Supp. 2d 22, 24-5 (D.D.C. 1999); see generally *Republic of Transkei v. INS*, 923 F.2d 175 (D.C. Cir. 1991) (discussing burden the petitioner must meet to demonstrate that the beneficiary qualifies as primarily managerial or executive); *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, specifics are an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Moreover, a significant portion of the beneficiary's duties will encompass managing accounts payable, and accounts receivable. The beneficiary will also supervise a purchasing department. The petitioner listed no employees as working for that department; therefore, the beneficiary will by necessity directly perform all of the U.S. entity's purchasing. The beneficiary will, thus, be performing tasks necessary to produce a product or provide a service. An employee who primarily performs the tasks necessary to produce a product or provide services 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).

Additionally, the petitioner asserts that the beneficiary is a manager because she will supervise and control the work of future managerial employers. In other words, the petitioner's assertions rely, in part, on future events rather than on conditions in existence when the petition was filed. CIS may not approve a visa petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). Therefore, the future hiring of additional employees has no bearing on whether the beneficiary's proposed duties qualify as primarily managerial.

Finally, the petitioner has not demonstrated that the beneficiary primarily will supervise a subordinate staff of professional, managerial, or supervisory personnel who can relieve her from performing nonqualifying duties. See section 101(a)(44)(A)(ii) of the Act. In particular, section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states, “[T]he term profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.” The term “profession” contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

The beneficiary will supervise four part-time employees. The petitioner provided no information about the required education for the four subordinate positions. Therefore, it is unclear whether the supervised employees perform tasks that require at least a baccalaureate degree. Furthermore, the petitioner did not discuss the four subordinates’ duties. As explained above, going on record without supporting documentary evidence is insufficient for the purpose of meeting the burden of proof in these proceedings. *Ikea US, Inc. v. INS, supra*; *Republic of Transkei v. INS, supra*; *Matter of Treasure Craft of California, supra*. Therefore, given the undefined job descriptions and unstated education requirements, it is unlikely that four subordinates would be able to relieve the beneficiary of her nonqualifying responsibilities.

In sum, the beneficiary’s vaguely defined responsibilities, production-oriented activities, reliance on future events, and supervision of a non-professional, non-managerial staff preclude CIS from classifying the beneficiary as a manager.

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.