U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

D7

File: SRC 05 169 51791 Office: TEXAS SERVICE CENTER Date: DEC 05 2006

IN RE: Petitioner: [redacted]
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, Chief
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 appeal will be summarily dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president and general manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Florida corporation, states that it is engaged in the import and distribution of bakery machines. The petitioner claims to be an affiliate of Insumos Industriales Mare C.A., located in Maracay, Venezuela. The beneficiary was initially granted a one-year period of stay in L-1A status in order to open a new office in the United States and the petitioner now seeks to extend her stay for two additional years.

The director denied the petition on August 13, 2005, concluding that the petitioner had not established that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal on September 2, 2005. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner submits the following statement on Form I-290B, and indicates that no separate brief or evidence will be submitted in support of the appeal:

> This company has just started business. USA is a very difficult market, that is why this company requested for me. This company needs all my experience in this kind of business. We'll be contracting employees steadily in the future as it grows. Although I'm doing more tasks besides managing and directing, I'll contract many other employees in the near future. Please, review the Business Plan already included in my file. You can also check [the petitioner's] web site.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary 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.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

> An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The petitioner's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*,

22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As noted by the director, the petitioner has failed to demonstrate that the beneficiary was performing primarily managerial or executive duties at the end of the U.S. company's first year of operations. The petitioner provided only a vague outline of the duties performed by the beneficiary, which failed to convey any understanding of the actual duties she performs on a day-to-day basis and was insufficient to establish that the beneficiary would be employed in a managerial or executive capacity. For example, in response to the director's request for a detailed position description, the petitioner indicated that the beneficiary would "represent the corporation in all activities," "administrate and manage the businesses and operation," "establish general guidelines," "manage the organization," "comply with the legal obligation of the corporation," and "identify new opportunities for business." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The director also properly considered the staffing levels of the petitioning organization in determining whether the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

At the end of the first year of operations, the petitioner employed the beneficiary as president and general manager, and a sales representative whose stated salary is consistent with part-time employment. Based on the totality of the evidence submitted, the director properly concluded that the beneficiary would be required to perform many non-qualifying duties associated with operating the business on a day-to-day basis in order for the company to remain operational. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

On appeal, the petitioner concedes that the beneficiary is "doing more tasks besides managing and directing," and does not specifically refute the director's determination. Instead, the petitioner requests that the company's hiring plans and anticipated future staffing levels be taken into consideration. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of*

Michelin Tire Corp., 17 I&N Dec. 248 (Reg. Comm. 1978). Even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirement to establish that the beneficiary was performing primarily managerial or executive duties as of the date of filing.

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.