

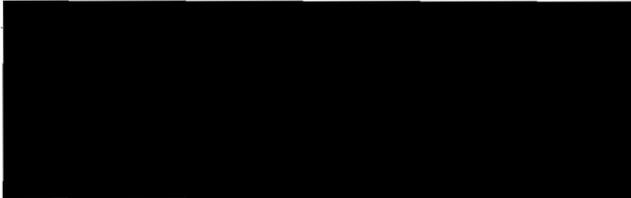
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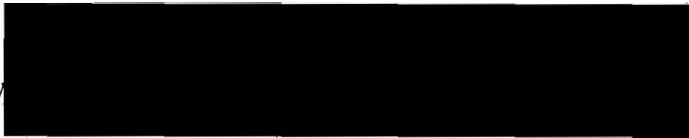
**U.S. Citizenship
and Immigration
Services**

07



FILE: SRC 04 234 51188 Office: TEXAS SERVICE CENTER Date: JUL 27 2006

IN RE: Petitioner:
Beneficiary



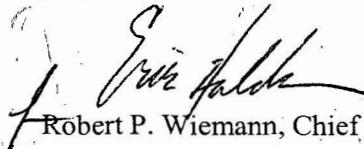
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, 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, [REDACTED] claims to be a subsidiary of [REDACTED] located in Argentina. The United States entity was incorporated in Florida and is engaged in the "restoration of Ferrari's, racing and Italian cars." The U.S. entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), as an executive or manager for three years. The petitioner seeks to employ the beneficiary's services as the U.S. entity's general manager.

The director denied the petition concluding that the record contains insufficient evidence to demonstrate that the beneficiary will be employed in a managerial or executive capacity.

On appeal, counsel for petitioner states on the Form 1-290B:

Due to the sensitive work [the petitioner] is involved in; the restoration of very expensive cars, there is very little margin for error. Therefore, in need of having someone like [the beneficiary] who has worked with the organization in Argentina and its partners in Italy and has the experience to deal with employees and very lucrative clients. [sic]. [The petitioner] also needs the direct management from someone like [the beneficiary] to establish goals and policies and direct the workers in the organization.

[A]nother problem in the industry in the past years has been the laxing economy, for which [REDACTED] the petitioner] is looking to hire 3 or more employees, but like we said the sensitive of restoring and working with such elite clientele the officers did not hire the employees fast enough to send the quarterly tax return.

The petitioner did not submit a brief or additional evidence in support of the appeal. The appeal fails to adequately address the director's conclusions.

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.

Upon review, AAO concurs with the director's decision and affirms the denial of the petition. Counsel's general objections to the denial of the petition, without specifically identifying any errors on the part of the director or providing new evidence to support that the beneficiary is in a position of managerial or executive capacity, 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)). The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I & N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I & N Dec. 503, 506 (BIA 1980).

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include "directing and coordinating activities of the organization to obtain optimum efficiency and maximize profits," "plan, develop and implement through administrative personnel, organizational policies and goals," "coordinate activities of department," and "exercise wide latitude in discretionary decision-making and work autonomously in making key decisions for the company." The petitioner did not, however, define the beneficiary's goals and policies, or clarify the role of the departments that the beneficiary will supervise. 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 petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on the totality of the record whether the description of the beneficiary's duties represents a credible account of the beneficiary's role within the organizational hierarchy. As noted by the director, the record does not demonstrate that the petitioner has any employees to perform the routine non-executive and non-managerial functions of the business.

Accordingly, the director reasonable concluded that the beneficiary as the petitioner's only employee will be performing the day-to-day operations and directly be providing the services of the business rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or -executive duties); see also *Matter of Church Scientology International* 19 I & N Dec. 593, 604 (Comm. 1988).

The petitioner indicated on the Form I-129 that the company has three employees. In addition, the petitioner submitted in its response to the director's request for evidence an organizational chart of the United States entity which indicated that the U.S. entity has five employees in addition to the beneficiary. Furthermore, the employees listed in the organizational chart for the U.S. entity are identical to the employees listed in the organizational chart for the parent company abroad. However, the petitioner's the quarterly tax return for the second quarter of 2004 indicates that the company currently has no employees. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Counsel indicates that the petitioner intends to hire additional employees in the future. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish the existence of a qualifying relationship between the United States entity and the foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In response to the director's request for evidence of the ownership and control of the U.S. entity, the petitioner submitted a stock certificate, number two, stating that [REDACTED] the owner of 51% of the shares. However, the same stock certificate was initially submitted by petitioner but did not originally include information regarding the number or percentage of shares issued to [REDACTED]. The petitioner claims to be a wholly-owned subsidiary of [REDACTED] the foreign sole proprietorship owner by [REDACTED]. This information appears to have been handwritten on the stock certificate subsequent to the filing of the petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582 at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id* at 591. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

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.

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 counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.