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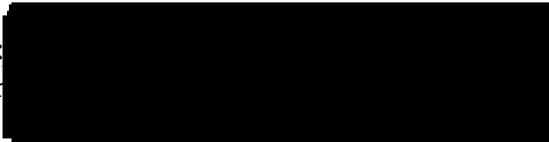
**U.S. Citizenship  
and Immigration  
Services**

D7



FILE: WAC 03 228 51021 Office: CALIFORNIA SERVICE CENTER Date: JUL 27 2006

IN RE: Petitioner:  
Beneficiary:



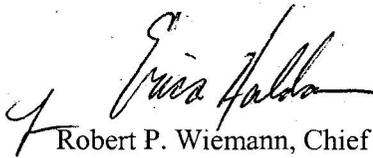
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, California 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 states that it is engaged in the retail sales business. 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 beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay in order to continue to fill the position of president.

On February 4, 2004, the director denied the petition because the petitioner failed to establish that the beneficiary will be employed in a primarily executive or managerial capacity.

The petitioner subsequently filed an appeal on February 25, 2004. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On the Form I-1290B Notice of Appeal, counsel for the petitioner asserts: "Service applied incorrect and incomplete legal standard and mischaracterized the facts, as well as presumed facts not in evidence and ruled accordingly. The decision should be reviewed."

Counsel indicated on Form I-1290B that she would submit a brief and/or evidence to the AAO within 30 days. As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile to request that counsel acknowledge whether the brief and/or evidence were subsequently submitted, and, if applicable, to afford counsel an opportunity to re-submit the documents. To date, counsel has not responded to the AAO's request. Accordingly, the record will be considered complete.

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, the 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, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I & N Dec. 1 (BIA 1983); *Matter of Laureano*, 19 I & N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I & N Dec. 503, 506 (BIA 1980).

As noted by the director, the petitioner failed to provide a comprehensive description of the beneficiary's proposed role as president of the petitioner's two-person company. 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 "plan, develop and establish policies and objectives for the company," "review activity reports and financial statements

to determine progress and status in attaining objectives and revise and plan in accordance with current conditions," and "plan and develop client relations to improve company sales." The petitioner did not, however, define the beneficiary's goals and policies, or clarify the role of the marketing, sales and client relations functions 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).

In addition, the petitioner indicated on the Form I-129 that the company has two employees. In a request for additional evidence, dated April 29, 2003, the director requested that the petitioner submit additional evidence of the staffing of the United States company, including the number of U.S. employees and their names, job titles, social security numbers, dates of employment, and wages per week, and Form DE-6, Quarterly Wage Report. In response, the petitioner explained that a Quarterly Wage Report could not be submitted because "it has not been filed as the employees that have been employed did not earn enough and were not employed long enough to submit a report." In addition, the petitioner indicated in its response that the U.S. company employs a contractor who started in September 2003, and a clerk who began her employment in November 2003. Both employees were hired subsequent to the filing of the petition on August 4, 2003. 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). The petitioner has not submitted evidence to establish that the beneficiary supervised a subordinate staff at the time the petitioner was filed. Going on record without supporting documentary evidence is not sufficient to satisfy the petitioner's 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)).

A critical analysis of the nature of the petitioner's business undermines counsel's assertion that the beneficiary supervises subordinate employees who would relieve her from performing non-qualifying duties. Rather, it appears from the record that the only individual performing any marketing and sales functions, finance operations and business development activities is the beneficiary herself. As the United States company has only recently hired a clerk and a contractor, it can only be assumed, and has not been proven otherwise, that the beneficiary is performing all other sales and marketing functions and financial development, and all of the various operational tasks inherent in operating a retail store on a daily basis, such as purchasing products, maintaining inventory, arranging store displays, receiving deliveries, paying bills, and handling routine customer transactions. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude her from functioning in a primarily managerial or executive role.

Accordingly, the director reasonably concluded that the beneficiary 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. at 604. Since the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity, the appeal will be dismissed.

Furthermore, another issue not presented by the director, is the fact that the petitioner did not fully respond to the request for evidence issued by the director on September 28, 2003. In the request for evidence, the director noted that the petitioner was previously granted L-1A status to set up a "new office" in the United States, however, the petitioner indicated on the Form I-129 that the requested extension was for a new office petition. The director requested that the petitioner explain why the petitioner was requesting an extension for a new office petition. In addition, the director requested that the petitioner clarify the specific nature of the new office's business, including a detailed description of the beneficiary's initial year of employment with the new office in the United States. The petitioner failed to submit this document in response. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). For this additional reason, the petition will not be approved.

Since the petitioner failed to adequately respond to the director's request for evidence, the petitioner has not established that it is eligible for an extension of the initial one-year "new office" validity period. The regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides strict evidentiary requirements that the petitioner must satisfy prior to the approval of this extension petition. Upon review, the petitioner has not satisfied any of the enumerated evidentiary requirements. The petitioner has not submitted evidence that the United States and foreign entities are still qualifying organizations as defined in 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner has not submitted evidence that the United States entity has been doing business for the previous year as defined in 8 C.F.R. § 214.2(l)(1)(ii)(H). The petitioner has not submitted a detailed statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition so that the AAO can determine whether the beneficiary is employed in a primarily managerial or executive capacity. The petitioner has not submitted a statement describing the staffing of the new operation. For all of these reasons, the petition may not be approved and the appeal will be dismissed.

Furthermore, beyond the decision of the director, the petition indicates that the beneficiary own 100 percent of the foreign entity, and thereby of the petitioning company. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that 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 that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In this matter, the petitioner has not furnished evidence that the beneficiary's services are for a temporary period and that the beneficiary will be transferred abroad upon completion of the assignment. In addition, the fact that the owner of the original foreign corporation resides in the United States raises the question of whether the parent organization is still doing business so that a qualifying relationship exists pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). For these additional reasons, the appeal will be dismissed and the petition denied.

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.