



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**  
**identifying data deleted to**  
**prevent clearly unwarranted**  
**invasion of personal privacy**

*D7*

FILE: SRC 06 031 51293 Office: TEXAS SERVICE CENTER

Date: **APR 12 2007**

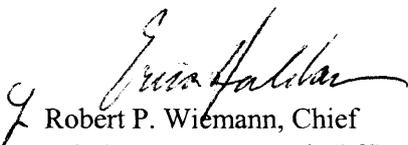
IN RE: Petitioner:  
Beneficiary:

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, a Jamaican company, claims to be the parent company of the proposed U.S. employer, a Florida corporation. The petitioner states that the United States entity is an importer and retailer of clothing. Accordingly, the United States entity petitioned U.S. Immigration and Citizenship Services (USCIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The beneficiary was initially granted a one-year period of stay in L-1A classification 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 general manager.

The director denied the petition concluding that the record contains insufficient evidence to demonstrate: (1) that the beneficiary will be employed in a managerial or executive capacity; and (2) that the United States company is doing business as required by the regulations.

Counsel for the petitioner subsequently filed an appeal on January 17, 2006. Counsel asserts that the director erred in the decision since the beneficiary is employed in a primarily managerial or executive capacity, and the U.S. company has been doing business as required by the regulations. Counsel for the petitioner indicates on Form I-290B 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 the petitioner by facsimile on February 21, 2007 to request that the petitioner acknowledge whether the brief and/or evidence were subsequently submitted, and, if applicable, to afford the petitioner an opportunity to re-submit the documents. Counsel for the petitioner responded via facsimile stating that she will send a copy of the brief with proof of mailing by March 1, 2007. As of April 11, 2007, the AAO has not received the brief from counsel. 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.

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. 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 will be employed in a primarily managerial or executive capacity or establish that the U.S. company is doing business, 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)).

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). On review, while the beneficiary evidently exercises discretion over the day-to-day operations of the business, the petitioner's description of her proposed duties suggests that the beneficiary's actual duties include a number of non-managerial and non-executive duties.

The beneficiary's proposed job description includes vague duties such as the beneficiary is responsible for all "planning, developing and executing the policies in order for the company to run smoothly"; "direct and coordinates the day-to-day activities"; and "managing, supervising and directing the activities of the business department concerned with pricing, sales and services." The petitioner does not explain what exactly are the goals and policies of the petitioner or what "activities" the beneficiary supervises. 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 her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. Specifics are clearly 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. *Id.*

In addition, the job duties required of the beneficiary include non-qualifying duties such as the beneficiary is responsible for "making of the payroll and the banking of the company" and "does all purchasing for the company." Without additional clarification from the petitioner regarding the managerial or executive duties involved, the AAO cannot distinguish these responsibilities from routine administrative tasks. If the beneficiary is in fact preparing the payroll, or simply ordering inventory from suppliers, these duties have not been shown to be managerial or executive in nature. Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

According to the organizational chart of the U.S. company initially submitted in support of the petition, the U.S. company employs a director/marketing manager who supervises a sales clerk who in turn supervises a contract worker. The chart also indicates that the beneficiary is the general manager and does not directly supervise any employees. However, according to the response to the director's request for evidence dated November 28, 2005, the petitioner indicated that the beneficiary supervises the marketing manager and the sales person. The petitioner has not explained why the initial U.S. organizational chart indicates that the beneficiary does not supervise any employees but in the response to the director's request for evidence, the petitioner asserts that the beneficiary supervises two 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).

According to the brief job descriptions of the employees of the U.S. company, submitted by the petitioner in a letter dated November 28, 2005, it appears that the marketing manager does the market research, develops pricing strategies, contacts media channels for marketing and develops the marketing programs for the U.S. company. It appears that the sales person acts as a cashier, and handles customer inquiries and complaints. The petitioner also indicated that the contract worker is responsible for the company's information technology operations. The petitioner stated that the contractor works on a "project to project basis."

It is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

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, CIS 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 CIS 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 CIS 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. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

At the time of filing, the petitioner operated a furniture store, and employed one marketing manager and one sales clerk. In reviewing the brief job descriptions of the employees at the U.S. entity, as discussed above, it appears that the beneficiary is engaged in the operational and administrative tasks in running the business. It appears that the marketing manager spends most of his time dealing with the marketing of the store, and the sales clerk handles the cash register and customer inquiries. Based on the evidence submitted, it appears that the beneficiary will be performing many of the various operational tasks inherent in operating the furniture store on a daily basis, such as acquiring products, negotiating contracts, preparing budgets and financial statements, budgeting, bookkeeping, paying bills, and customer service. 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. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company

might plausibly be met by the services of the beneficiary as the general manager, marketing manager, and one sales clerk. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

In addition, the petitioner indicated in its letter of support dated October 28, 2005, that the operating hours of the store are from 10:00 a.m. to 7:00 p.m. In addition, the petitioner states that its store hours will be extended for the Christmas holiday season to 9:00 a.m. to 10:00 p.m. Although the petitioner did not indicate how many days a week the store is open, the AAO will assume that the furniture store, given the nature of the business, is open daily or at least six days a week, for at least ten hours, or a total of 70 or more hours per week. At the time of filing, the petitioner employed the beneficiary as general manager, one marketing manager and one sales clerk. According to the job descriptions submitted by the petitioner, it appears that the store clerk is the only employee for operating the store. But the petitioner has not accounted for who is responsible for operating the store during the many operating hours when neither of the beneficiary's subordinates are available. The petitioner has not explained how two employees are able to perform most or all of the day-to-day functions of ordering merchandise and supplies, arranging and stocking merchandise displays, cleaning the store, processing customer purchases of goods, handling deliveries, reconciling daily cash register receipts and many other routine duties associated with operating the business. Given the absence of employees who would perform the non-managerial or non-executive operations of the company, it is reasonable to conclude that the beneficiary would need to spend a significant portion of his time directly providing the services of the company or directly supervising employees performing cashier duties. *See Matter of Soffici*, 22 I&N Dec. at 165.

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.

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the petitioner does not have sufficient staffing after one year to relieve the beneficiary from primarily performing non-qualifying operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. For the foregoing reasons, the AAO concludes that the director properly concluded that the petitioner did not establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

As noted by the director, it does not appear that the U.S. company is doing business as required by the regulations. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of the new office petition, the regulations at 8 C.F.R.

§ 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year. The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii). There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension.

As noted by the director, the petitioner indicated that the U.S. entity commenced its business in June 2005, even though the beneficiary entered the United States in valid L-1 classification in January 2005. The petitioner has failed to provide any documentation of the U.S. company doing business from January 2005 until June 2005, such as such as financial statements, IRS federal tax returns, and/or copies of invoices. 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. at 165. Based on the evidence of record, the director appropriately determined that the petitioner failed to establish that it was doing business for the previous year as required by the regulations.

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. Therefore, the appeal will be summarily dismissed.

**ORDER:** The appeal is summarily dismissed.