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U.S. Citizenship
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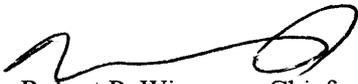
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

IN 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

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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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its administrative 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, claims to be the subsidiary of Corporacion Goncab, S.A., located in Miranda, Venezuela. The petitioner claims to be engaged in the import and export of household products. 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 for an additional two years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary had been and will continue to be employed in the United States in a primarily managerial or executive capacity.

The petitioner filed an appeal in response to the denial. On appeal, the petitioner contends that the denial was contrary to federal case law, and contends that the director placed undue emphasis on the size of the petitioner's enterprise. In support of these contentions, the petitioner submits a detailed brief.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. In addition, 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.

The regulation at 8 C.F.R. § 214.2(l)(3) states 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.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner submitted the following overview of the beneficiary's duties in the United States in a letter from the foreign entity dated February 18, 2004:

The control of the employees and future employees employed with the company.
Training of employees (hiring and firing of employees);
Managing the finances;
Planning, developing, and implementing company strategy;
Planning the future expansion of the business and possibility of franchising the said business;
Developing and implementing policies and procedures for company operations;
Determining mark-up percentages necessary to insure profit based on estimated budget, profit goals and average rate of client acquisition.
Developing policies and procedures for procurement of services;
Oversee the negotiating of contracts with clients;
Authorizing of purchase of contract services based on estimates;
Formulating pricing policies for sales of services;
Review statements, invoices, bill of landing [sic], and insurance certificates
Coordinate the purchase of services, supervising the contact with different vendors to attain the desired services;
Plan business objectives, develop organizations policies and establish responsibilities and procedures for attain objectives with the business operations of internet services business;
Review activity reports and financial statements to determine process and status in attaining objectives and revises objectives and plans accordance with current conditions;
Direct and coordinate formulation of financial programs to provide funding of new or continuing operations to maximize returns on investments and increase productivity[.]

The petitioner submitted an organizational chart for the U.S. company which identifies a company president, who supervises the beneficiary and a sales manager. There are no subordinate employees depicted under the beneficiary's position.

On March 19, 2004, the director requested additional evidence pertaining to the other employees of the petitioner, including their positions within the petitioner's organizational hierarchy as well as their educational backgrounds. The director also requested evidence discussing how the beneficiary would refrain from performing the day-to-day duties of the petitioner.

In response, the petitioner submitted an undated letter which repeated the list of the beneficiary's duties set forth above. In addition, the petitioner explained that the beneficiary, as administrative manager, oversaw three employees; namely: a sales manager, a budget analyst, and an administrative secretary. An attachment to this letter also provide a brief description of the duties of each of these persons as well as a fourth employee, the petitioner's president. Finally, the attachment indicated that the sales manager and budget analyst both possessed a bachelor's degree in business administration.

On June 17, 2004, the director denied the petition. The director found that the petitioner had not established that the beneficiary would exercise authority over subordinate employees or manage an essential function or component of the organization. The director further noted that the beneficiary would be performing the day-to-day duties of the petitioner.

On appeal, the petitioner contends that the petitioner had established that the beneficiary was employed in a qualifying capacity, and alleges that the director's decision was erroneous. On appeal, the petitioner submits an updated description of the beneficiary's duties, which provided a breakdown of the percentage of time the beneficiary devoted to each of the stated duties.

Upon review, the petitioner's assertions are not persuasive. 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). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

In this matter, the petitioner provided a list in its initial letter of support of the beneficiary's duties in the United States. In response to the director's request for evidence supporting a claim that the beneficiary would not be engaged in the day-to-day duties of the business, the petitioner merely resubmitted the same list of duties that it had initially provided. Based on the current record, therefore, 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).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. As stated above, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as "managing the finances," "coordinate[ing] the purchase of services, supervising the contact with different vendors to attain the desired services," and "overseeing the negotiating of contracts with clients" do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). 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 answer a critical question in this case: What does the beneficiary primarily do on a daily basis? 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 an attempt to clarify this question, the petitioner provided an updated description of duties on appeal, including a percentage breakdown of the time devoted to each duty. Specifically, the petitioner stated that his duties were as follows:

- (25%) Manage the overall activities of the company, make operation decisions for the company, and supervise the administration and the finance of the company.
- (20%) Supervise as well as take part in the process of hiring, promoting, demoting, and firing of any employees in the company.
- (20%) Manage and direct the business' daily activities with emphasis in the implementation of company policies.
- (20%) Supervises and Control the work of the personnel under his charge.
- (5%) To develop the company's long-range goal objectives directed to the expansion of the company into the Latin American and European markets.
- (5%) Maintain regular communication with the parent company.
- (5%) Determine the needs of the company including the purchase of any equipment needed for the successful operation of the company.

Upon review, the newly-submitted description of duties is still insufficient to establish the beneficiary's eligibility for the benefit sought. The petitioner attempts to supplement the record, yet once again provides generalized statements that fail to identify the exact nature of the beneficiary's duties. As previously stated,

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. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. Furthermore, the duties identified on appeal seem to quote the regulatory definitions as opposed to articulating the exact nature of the beneficiary's tasks. Merely relying on a list of broad duties as the basis for claiming that the beneficiary is qualified for the benefit sought is insufficient. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Furthermore, the petitioner claims that 20% of the beneficiary's time is devoted to supervising and controlling the work of subordinates, and the evidence submitted in response to the request for evidence indicates that the beneficiary is supervising three subordinate employees. However, upon review of the evidence submitted with the initial petition, it appears that the beneficiary had no subordinate staff members at the time of the filing of the petition.

At the time of filing, the petitioner claimed that its president supervised two employees: the beneficiary and a sales person. The sales person was not a subordinate employee of the beneficiary, and the organizational chart indicated that he did not supervise any employees. In response to the request for evidence, however, the petitioner claimed that the beneficiary supervised [REDACTED] the sales manager; [REDACTED] the budget analyst; and [REDACTED] the executive secretary.

Upon review, the AAO notes that according to the organizational chart, the sales manager was a lateral employee to the beneficiary, and not his subordinate at the time of filing. Furthermore, there was no mention of the budget analyst or the executive secretary at the time of filing, and no evidence of wages paid to these persons at the time of filing is contained in the record. As a result, the AAO cannot conclude that the beneficiary was supervising a subordinate staff at the time of filing.

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). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence added a list of subordinate staff members not supervised by the beneficiary at the time of filing. While the AAO notes that the petitioner may have hired these additional employees since the filing of the petition, this factor is irrelevant, since 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. *Id.*

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 support an executive or managerial position. There is no provision in CIS

regulations that allows for an extension of this one-year period. Although the petitioner demonstrates on appeal that it has since hired new employees, this evidence is insufficient to establish eligibility in this matter. 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). Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that it has been doing business for the previous year. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines the term “doing business” 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.”

In this matter, the petitioner claims that it is engaged in the import and export of household products. In the course of examining whether a petitioning company has been doing business as an import and export firm, it is reasonable to expect the company produce copies of documents that are required in the daily operation of the enterprise due to routine regulatory oversight. Upon the importation of goods into the United States, the Customs Form 7501, Entry Summary, serves to classify the goods under the Harmonized Tariff Schedules of the United States and to ascertain customs duties and taxes. The Customs Form 301, Customs Bond, serves to secure the payment of import duties and taxes upon entry of the goods into the United States. According to 19 C.F.R. § 144.12, the Customs Form 7501 shall show the value, classification, and rate of duty for the imported goods as approved by the port director at the time the entry summary is filed. The regulation at 19 C.F.R. § 144.13 states that the Customs Form 301 will be filed in the amount required by the port director to support the entry documentation. Although customs brokers or agents are frequently utilized in the import process, the ultimate consignee should have access to these forms since they are liable for all import duties and taxes. Any company that is doing business through the regular, systematic, and continuous provision of goods through importation may reasonably be expected to submit copies of these forms to show that they are doing business as an import firm.

In this matter, no such documents have been submitted in support of the claim that the petitioner is engaged in the business it claims. Although the petitioner has submitted corporate bank statements, bank statements are not representative of continuous provision of goods and/or services as required by the regulations. The definition of doing business clearly requires the continuous provision of goods and services, yet the petitioner has failed to submit evidence establishing its business activities for the first year of operations. The beneficiary was granted a one-year stay in which to open a new office. There is no evidence of any business activity during this period. The petitioner, therefore, has not established that it was regularly, systematically, and continuously providing goods and/or services during the entire year preceding the filing of the extension request. For this additional reason, the visa petition may not be approved.

Additionally, the record contains some conflicting evidence with regard to the ownership of the petitioner. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); see also

Matter of Siemens Medical Systems, Inc., 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

The initial owners of the petitioner, according to the Articles of Incorporation adopted on May 2, 2002, were the beneficiary and [REDACTED], both of whom owned 250 shares. An amendment to the original Articles of Incorporation, adopted on January 5, 2003, changed the ownership, and reassigned the shares as follows:

[REDACTED]	52%
[REDACTED]	24%
[REDACTED]	24%

In support of this change in ownership, the petitioner submitted unsigned share certificates, numbered 1, 2 and 3, to corroborate these percentages of ownership.

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.*, *supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In this matter, the failure of the petitioner to submit the stock ledger leads the AAO to question whether the above claim by the petitioner is legitimate. Specifically, the stock certificates submitted in support of the petitioner's current ownership are numbered 1, 2 and 3. However, according to the evidence contained in the record, the original issue of shares was dispersed to the beneficiary and [REDACTED], who would have held certificate numbers 1 and 2. If the legitimate transfer of shares had taken place, the reissued shares as claimed above should have been issued on certificate numbers 3, 4 and 5, and the stock ledger would corroborate this transfer.

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). 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Since the petitioner has not sufficiently explained this inconsistency, the

AAO cannot conclude that a qualifying relationship exists between the parties. 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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.