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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 02 260 50446 Office: TEXAS SERVICE CENTER Date: JUN 18 2004

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:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as a general insurance and reinsurance business. It seeks to employ the beneficiary temporarily in the United States as its manager. The director determined that the petitioner had not submitted sufficient evidence to demonstrate that the beneficiary would be employed by the U.S. entity primarily in a managerial or executive capacity.

On appeal, counsel disagrees with the director's determination and asserts that the beneficiary's duties will be managerial or executive in nature.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

> *Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge.

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 (1)(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 with 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 serves in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

According to the documentary evidence contained in the record, the petitioner was incorporated in 1998 and claims to be in the general insurance and reinsurance business. The petitioner claims that the U.S. entity is a subsidiary of Cooper Gay Colombia Ltda. The petitioner declares three employees. The petitioner seeks to employ the beneficiary as its manager for a period of three years, at a salary of $30,000.00 per year.

The issue presented in this proceeding is whether the petitioner has established that the beneficiary will be employed by the U.S. entity primarily in a managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

> The term "managerial capacity" means 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), provides:

> The term "executive capacity" means 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.

In the petition, the petitioner stated that the beneficiary would be responsible for coordinating and directing all the Latin American operations, studying and determining the investment necessary to commence operations in other countries, directing the marketing operations, and directing the sales within the financial areas of the organization.

In a letter of support, dated August 26, 2002, counsel described the beneficiary's proposed duties as follows:

> [The beneficiary] will be responsible for managing the opening of two important lines "Personal Insurance" and "Premium Financing" of the U.S. entity. He will develop in Latin America a broking [sic] network for personal lines and premium financing business. He will study and determine the investment necessary to start companies in different countries and will obtain the legal counseling necessary to make these projects attainable. Further, he will also make a presentation to various American banks and individual entrepreneurs and investors interested in participating in this network and will try to obtain special products and reinsurance from reinsurers [sic] based in Florida and other states who know well and are attracted by the Latin American market such [as] Liberty [redacted] Re. [The beneficiary] will observe all the time [sic] social and economic trend in the region who will restrain the corporation to invest in certain countries or to spot favorable economic conditions in countries who will provide the highest revenues for the corporation. He will function at a senior level within the organizational hierarchy or with respect to the function managed. [The beneficiary] will also exercise discretion over the day-to-day operations of the activity or function for which he has authority. [sic]

In that same letter of support, the petitioner provided a breakdown of how the beneficiary's time will be spent:

- Networking with business industries in community to identify and cultivate new information sources; (20%)
- Communicate with various suppliers, distributors, clients, and potential clients, related to general Insurance and reinsurance; (20%)
- Study and determine the investment necessary to start up companies operations in different countries and monitor finances; (15%)
- Analyze the most suitable markets to develop the business of the company; (15%)
- Evaluate and review the services ultimately provided by the company to ensure it meets proper specifications as per customer, and the products to ensure conformity with standards; and (15%)
- Maintain regular communication with the foreign parent company. (15%)

In response to the director's request for additional evidence, the petitioner stated that it employed a managing director and two economic analyst/brokers. The petitioner further stated, "[the beneficiary] will directly manage [the two economic analyst/brokers] in his area of influence which is the personal lines and premium

financing project." The petitioner also stated "[the beneficiary's] main duty is to create the possibilities of expansion for the company in the area of personal lines and premium financing business in 5 to 6 Latin-American countries." The petitioner asserted that the beneficiary would also be responsible for supervising four employees in Colombia, four employees in Ecuador, four employees in Peru, and ten employees in Mexico.

The director determined that the petitioner had failed to submit sufficient evidence to establish that the beneficiary would be performing job duties primarily in a managerial or executive capacity. The director stated that the petitioner had not demonstrated that: (1) the beneficiary manages or directs the management of a department, subdivision, function or component of the organization; and, (2) the beneficiary will be involved in the supervision and control of the work of other supervisory, professional or managerial employees who will relieve him from performing the services of the business. The director concluded that the majority of the beneficiary's time would be spent in the non-managerial, day-to-day operations of the business. The director further stated that it was unrealistic for a corporation to have 50 percent of its personnel in managerial positions.

On appeal, counsel disagrees with the director's decision and states that the director erred in not reviewing all evidence submitted, as a whole, before rendering the decision. Counsel asserts that the evidence establishes that the beneficiary will be managing a necessary function or component of the organization. Counsel further asserts that the beneficiary will be supervising two economic analysts/brokers who are employed as professionals, and that he will also supervise individuals in affiliated offices in Colombia, "Equator [sic]," Peru, and Mexico.

Counsel contends that the director erred in failing to review the company business plan as it relates to the beneficiary's proposed duties. The following are the specific paragraphs noted by counsel:

> Cooper Gay Miami has several tasks in the short term:
>
> 7. Explore the possibilities of creating in some Latin American Countries a direct brokering network for personal lines with the know-how [the beneficiary] has created in Colombia with the trademark of Don Segurito. This network will need a strong partner in each chosen country and will need the sponsoring of strong American insurance players like Liberty Mutual of Boston, CIGNA of Philadelphia and ACE of Bermuda.
>
> 8. Explore the possibilities to compliment point No. 7 with a premium financing company for personal lines. Again this study has to be carried out by [the beneficiary] using the know-how he has already developed in Colombia.
>
> In the short/medium term we will offer [the beneficiary] the possibility to be transferred to our Miami office with his family to support develop and directly handle the development of plans 7 and 8.

On appeal, counsel resubmits copies of the October 22, 2002 letter written by the petitioner, and a copy of the U.S. entity's business plan.

Counsel's assertions are not persuasive. The evidence is insufficient to establish that the beneficiary will be employed by the U.S. entity in a functional manager capacity. Although counsel contends that the beneficiary

will be managing a necessary function or component of the organization, there has been no independent substantive evidence submitted to substantiate this assertion. In the instant matter, the term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

In this matter, the petitioner has not specifically identified a function to be managed by the beneficiary, or how such a function will be managed. In the petition it is stated that the beneficiary will be responsible for coordinating and directing all the Latin American operations, studying and determining the investment necessary to commence operations in other countries, directing the marketing operations, and directing the sales within the financial areas of the organization. In the business plan it is stated that the beneficiary will be responsible for exploring the possibilities of creating a direct brokering network for personal lines in some Latin American countries and exploring the possibilities to complement that effort with a premium financing company for personal lines. The descriptions given by the petitioner are general and do not establish that the beneficiary will be managing rather than actually performing the functions.

Although counsel asserts that the beneficiary will be responsible for managing a subordinate staff, the record does not establish that the subordinate staff is composed of supervisory, professional, or managerial employees. *See* section 101(a)(44)(A)(ii) of the Act. A first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act. In the instant matter, counsel states on appeal that the beneficiary will be supervising two economic analysts employed in professional positions, and will also be overseeing persons in affiliated offices in Colombia, Ecuador, Peruvian, and Mexico. However, the petitioner has not provided position descriptions for the subordinate employees in the United States. Likewise, the petitioner has not provided titles or job descriptions for the Colombian, Ecuadorian, Peruvian, or Mexican employees that the beneficiary allegedly supervises. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has failed to submit sufficient evidence to demonstrate that the duties performed by the subordinates are professional in nature. Moreover, the petitioner has not allocated any of the beneficiary's time to supervising subordinates.

Finally, the petitioner's description of the beneficiary's duties fails to demonstrate that the beneficiary will be primarily performing in a managerial or executive capacity. For example, the petitioner states that the beneficiary's duties will include networking with business industries in the community; communicating with various suppliers, distributors, and clients; analyzing markets; and maintaining communication with the foreign entity. These duties are more indicative of an individual providing sales services. *Matter of Church Scientology International, supra.* Counsel's explanations for these characterizations on appeal are not sufficient to overcome the objections of the director. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, counsel's

reference to the petitioner's business plan does not assist in establishing that the beneficiary's duties are primarily managerial or executive. Counsel does not explain how the beneficiary's exploration of the possibility of creating a direct brokering network in Latin America comprises primarily a managerial or executive function.

In review of the petition and evidence submitted, the petitioner has failed to demonstrate that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. Based upon the petition and evidence presented, it appears that the beneficiary will be performing the functions necessary to create and develop the "Personal Institute" and "Premium Financing" lines within the U.S. entity rather than managing the function or component of the organization. In addition, the evidence does not establish that the economic analyst/broker positions constitute professional, supervisory, or managerial duties. Likewise, there is no evidence to demonstrate that the activities performed by the employees of the Colombian, Ecuadorian, Peruvian, or Mexican affiliates are professional, supervisory, or managerial. For these reasons, the appeal will be dismissed.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.