



U.S. Citizenship
and Immigration
Services

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

PUBLIC COPY

D7

FILE: SRC 03 148 50703 Office: TEXAS SERVICE CENTER Date: OCT 27 2005

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, Director
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 filed this nonimmigrant petition seeking to extend the employment of its general 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 is a Florida limited liability company and claims to be an affiliate of [REDACTED] Limited located in Kingston, Jamaica. It operates a hair and nail salon. The beneficiary was initially granted a one-year period of stay in L-1A status in order to open a new office in the United States and the petitioner now seeks to extend her stay for a two-year period.

The director denied the petition concluding that the petitioner had not established that: (1) the beneficiary would be employed in a managerial or executive capacity; or (2) the petitioner was doing business for the year preceding the filing of the petition.

On the Form I-290B Notice of Appeal submitted on September 13, 2004, the petitioner states:

The documentary evidence provided has strongly addressed the operations of both [the foreign entity] and [the petitioner] as well as the executive nature of the duties being undertaken by [the beneficiary] on behalf of both companies.

The petitioner indicates that a brief and/or evidence would be submitted within 30 days. As of this date, the record does not contain a supplemental appellate brief or additional supporting evidence, and 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. Although the director's decision will be affirmed, the AAO finds sufficient evidence on record to establish that the petitioner was doing business for the year preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). The director's decision with respect to this issue alone will be withdrawn.

The petitioner's vague assertion that it previously submitted sufficient documentary evidence to establish the beneficiary's employment in an executive capacity is insufficient to overcome the director's determination. The beneficiary is described as performing a number of duties which do not fall under traditional definitions of managerial or executive capacity, including researching market preferences, researching and purchasing products used and sold in the petitioner's salon, duties related to advertising, monitoring a bank account, paying bills, making deposits and performing other routine financial and administrative tasks which suggest

that the beneficiary is primarily engaged in the non-managerial, non-executive daily operations of the business. These duties do not appear to be incidental to the beneficiary's daily duties. An employee who primarily performs the tasks necessary to produce a product or provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 583, 604 (Comm. 1988).

Furthermore, as noted by the director, the petitioner employs the beneficiary as its sole payroll employee. The petitioner claims a fluctuating number of stylists and technicians who pay a weekly fee of \$250 in order to operate out of the petitioner's salon, but has not provided documentation to confirm its contractual relationship with these individuals. 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)). Furthermore, although the petitioner has attempted to depict a three-tiered hierarchy among the independently contracted stylists and technicians, the job descriptions it provided for its "senior stylist/salon manager," "assistant manager/stylist," and "senior nail technician" show that these individuals are primarily engaged in providing the services of the business, rather than in supervising lower-level employees. Accordingly, the beneficiary appears to be the first-line supervisor of the non-professional salon personnel. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

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.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily 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. Here, the petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.