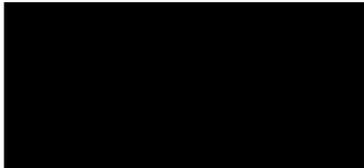


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U.S. Citizenship  
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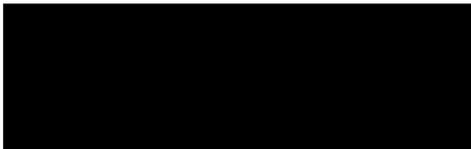
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FILE: SRC 05 213 52131 Office: TEXAS SERVICE CENTER Date: NOV 22 2006

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

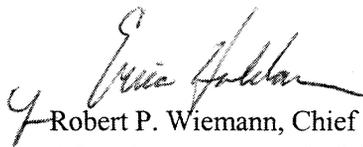
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 Florida corporation, claims to be a subsidiary of [REDACTED] located in Venezuela. The petitioner states that the United States entity is engaged in the sale and distribution of ink cartridges, toner, remanufactured ribbons and related products used in industrial coding. Accordingly, the United States 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 Act (the Act), 8 U.S.C. § 1101(a)(15)(L). 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 a two-year period in order to continue to fill the position of president/director.

The director denied the petition on September 6, 2005, 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.

The petitioner subsequently filed an appeal on September 29, 2005. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. Counsel indicated on Form I-1290B that she would submit a brief and/or evidence to the AAO within 60 days. As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile on November 8, 2006 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. Counsel for the petitioner responded to the AAO on November 9, 2006, indicating that no brief or evidence was submitted in support of the appeal. 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 or providing new evidence to support that the beneficiary is in a position of managerial or executive capacity and the United States company has been doing business for the past year, 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will have "ultimate authority on staffing," "directs business development," "designs and implements short- and long-term marketing policies," and the beneficiary has "ultimate authority on investments and all financial matters." Reciting the beneficiary's vague job responsibilities or broadcast 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).

Further, a critical analysis of the nature of the petitioner's business undermines the petitioner's assertion that the subordinate employees relieve the beneficiary from performing non-qualifying duties. As the United States company can only document the existence of four employees, including the beneficiary, one part-time executive assistant, one office administrator and one receptionist, it can be reasonably assumed that the beneficiary will be directly performing the promotion, marketing, sales, financial development, and administrative functions and many of the various operational tasks inherent in operating a business on a daily basis, such as acquiring products, maintaining inventory and customer service. Based on the record of proceeding, the beneficiary's job duties will be 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 to 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

In addition, although the petitioner asserts that the beneficiary is 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. The petitioner submitted an organizational chart indicating that the beneficiary will supervise part-time executive assistant, one office administrator and one receptionist. The petitioner has not submitted evidence that the beneficiary's subordinates are supervisory, professional or managerial employees. It appears that these subordinates will be in charge of clerical, administrative and basic finance functions. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the import and export and sales functions of the subordinates supervised by the beneficiary. Thus, the petitioner does not establish that the subordinate staff is composed of supervisory, professional or managerial employees.

As discussed above, the beneficiary's job description included primarily non-qualifying duties associated with the petitioner's day-to-day functions, and the petitioner has not identified sufficient employees within the petitioner's organization, subordinate to the beneficiary, who would relieve the beneficiary from performing routine duties inherent to operating the business. The fact that the beneficiary has been given

a managerial job title and general oversight authority over the business is insufficient to elevate her position to that of an executive or manager as contemplated by the governing statute and regulations.

In the present matter, 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.

In addition, 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). In the instant petition, counsel for the petitioner stated in its response to the director's request for evidence dated August 22, 2005, that "From September to December 2004, [the U.S. company] was introducing its products to the market, and thus it did not engage in any direct sales during that period of time." As the United States company was not doing business for four months out of the previous year, the petitioner did not submit sufficient evidence to establish that it has been doing business since the date of the approval of the initial petition.

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.