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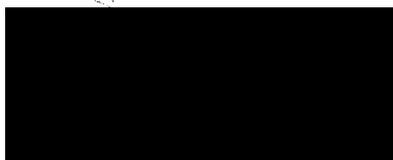
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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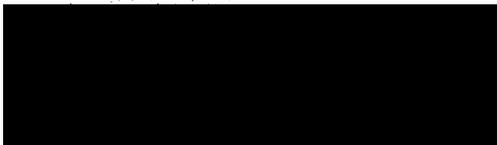


FILE: SRC 03 097 52518 Office: TEXAS SERVICE CENTER Date: FEB 07 2005

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.

Michael P. Wiemann for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, granted the petition for a nonimmigrant visa on February 21, 2003. The director subsequently issued a notice of intent to revoke, to which counsel responded in an undated letter. On August 8, 2003, the director revoked the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking to employ the beneficiary as a nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Florida that is engaged in the sale, rental and repair of road building machinery. The petitioner claimed that it is the subsidiary of the beneficiary's foreign employer, located in Buenos Aires, Argentina. The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as its general manager for one year.

The director approved the petition on February 21, 2003. The director subsequently issued a notice of intent to revoke the petition based on the regulation at 8 C.F.R. § 214.2(h)(11)(I).¹ The director noted that the petition was returned by the United States consulate office in Buenos Aires, where the beneficiary had appeared for an interview and "stated he has been performing the day to day tasks of his [foreign] company." The director stated that the beneficiary does not qualify as a nonimmigrant intracompany transferee because he was not employed abroad for at least one year in the three years prior to filing the petition in a qualifying capacity. The director correctly notified the petitioner of its opportunity to submit evidence in rebuttal within thirty days of the notice.

Counsel responded in an undated letter claiming that the evidence previously submitted demonstrates that the beneficiary has been employed by the foreign entity in a primarily managerial capacity since 1997. Counsel stated that as the general manager and a 50% shareholder of the foreign entity, the beneficiary was responsible for the company's administration, legal representation and "use of the corporate signature." Counsel submitted the foreign entity's Commerce Registration as evidence of the beneficiary's position as a general manager. Counsel also stated that the beneficiary controlled and supervised the foreign company's functions, established its goals and policies, supervised employees, made commercial and administrative decisions, and represented the company to clients. Counsel submitted a letter and additional documentation, including a statement from the beneficiary regarding his employment abroad, the foreign entity's Sale and Mortgage Agreement, which identifies the beneficiary as a representative of the company, and the company's organizational chart, in support of the rebuttal.

In a decision dated August 8, 2003, the director determined that the petitioner had not demonstrated that the beneficiary was employed abroad in a qualifying capacity. The director provided:

In response to [the notice of intent to revoke] the attorney of record submits evidence that the beneficiary is part owner and general manager of the foreign company. This does not however prove that the beneficiary has been working in the required capacity as described in the regulations, especially in view of his statement to the consular officer.

Consequently, the director revoked the petition.

¹ The director incorrectly identified the applicable regulation. The regulation at § 214.2(l)(9)(iii) outlines the appropriate basis for the revocation of an L petition. The AAO acknowledges the director's error, yet notes that it was not material, as the petitioner was provided notice of the revocation and an opportunity to respond.

On appeal, counsel claims that the director erred in her finding that the beneficiary was not employed abroad in a primarily managerial capacity. Counsel states:

The evidence presented demonstrates that the beneficiary is the General Manager of the foreign company, Rentavial S.R.L. as he is responsible for conducting and controlling of the operations of the company, setting and reviewing corporate objectives, directs the budget, controls the personnel evaluation, hiring and firing. In addition, he implements administrative and operational policies and procedures. There is no evidence in [the] record whatsoever that proves otherwise.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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.

Pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(v), if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation;

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

- (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
- (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
- (3) The organizational structure of the foreign entity.

In the instant matter, counsel's statements on appeal are not sufficient to demonstrate the beneficiary's eligibility as a nonimmigrant intracompany transferee. Any statements made by counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Here, counsel provides an outline of the beneficiary's job duties similar to those already considered by the director in her decision. Counsel contends that nothing in the record is contrary to a finding that the beneficiary was employed abroad in a primarily managerial capacity. Without documentary evidence to support the claim, counsel's assertions on appeal will not satisfy the petitioner's burden of proof. *See Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. For this reason, 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. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.