

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

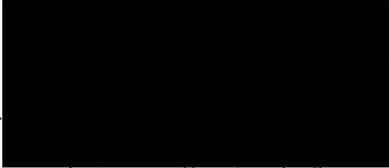
**PUBLIC COPY**

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



U.S. Citizenship  
and Immigration  
Services

DT



FILE: SRC 02 091 51615 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:

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, 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 AAO will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking to extend the employment of its president 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 operating as a marketing and communications company. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer, Bogota, Colombia. The petitioner now seeks to employ the beneficiary for ten months.

In a decision dated July 29, 2002, the director determined that the petitioner had failed to demonstrate that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director noted that although the petitioner claimed to employ three workers, the total amount of salaries paid by the petitioner during 2001 was \$4,120. The director also stated that the beneficiary would not manage or direct the management of a department, subdivision, function, or component of the United States business, and would not supervise or control the work of other supervisory, managerial, or professional employees. The director determined that the beneficiary would dedicate the majority of his time to performing the non-qualifying daily tasks of the business. Consequently, the director denied the petition.

In an appeal filed on September 3, 2002, the petitioner explains that it was impacted by the attacks on September 11, 2001, and was therefore required to suspend its operations in the United States. The petitioner states that as a result, it paid only \$4,120 in salaries during its first year. The petitioner further states:

The evidence previously submitted to [Citizenship and Immigration Services (CIS)] was enough to persuade [CIS] regarding the executive and managerial nature of the beneficiary's position in [the] USA. All what [sic] happened, was that an unexpected fact, not controllable by the petitioner, forced [the petitioner] to postpone the expansion plans of the company.

The petitioner requests "a chance to reinstate its operation, recover the investments, and create the projected jobs that [CIS] took into consideration when [it] accepted [the beneficiary's] duties would be those of a bona fide executive."

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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) 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 management or executive capacity; and

(E) Evidence of the financial status of the United States operation.

In the instant matter, the AAO concurs with the director's decision and affirms the denial of the petition based on the petitioner's failure to demonstrate that the beneficiary would be employed in a primarily managerial or executive capacity. When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. 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. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension.

The petitioner requests on appeal additional time to reinstate its operations and to fill its projected job positions. The petitioner fails to recognize the regulatory requirement that the petitioning organization must be sufficiently operational within one year of the filing of the nonimmigrant petition. Additionally, while the AAO recognizes the effects of the attacks of September 11, 2001 on the United States' economy, the tragic incident may not be exploited in order to receive additional time to establish the beneficiary's position as a manager or an executive. The petitioning organization has not reached the point that it can employ the

beneficiary in a predominantly managerial or executive position. 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.