

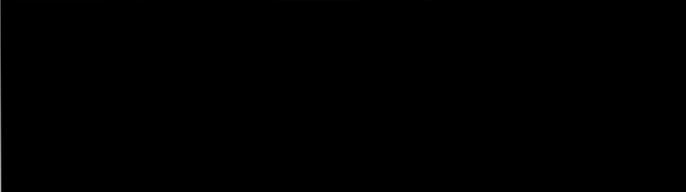
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U.S. Citizenship
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Services

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FILE: SRC 04 002 52565 Office: TEXAS SERVICE CENTER Date: JUL 18 2006

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

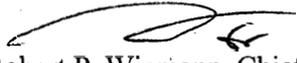
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

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, 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 AAO will dismiss the appeal.

The petitioner is a new office engaging in the business of providing office services. It seeks to employ the beneficiary as its administrative manager, and filed a petition to classify the beneficiary 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 claims that it is the subsidiary of [REDACTED] located in Caracas, Venezuela.

The director denied the petition concluding that the petitioner has failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity for one continuous year in the three years prior to the filing of the petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that during the three years preceding the filing of the petition, the beneficiary was employed by a U.S. subsidiary of the foreign entity under an H-1B nonimmigrant visa and was also a part-time employee of the foreign entity.

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.

Moreover, 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 (l)(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.

At issue in this proceeding is whether the beneficiary was employed abroad in a primarily managerial or executive capacity for one continuous year in the three years prior to the filing of the petition.

In an attachment to the Form I-129, Petition for a Nonimmigrant Worker, and a letter from the petitioner dated August 25, 2003 submitted with the initial petition, the petitioner indicates that the beneficiary has been employed by the foreign entity since February 2000 as a purchase manager and imports coordinator. The beneficiary's responsibilities in her position with the foreign entity are described as:

- Coordinating and supervising the imports and exports procedures in general, which include: deal with the supplier, obtain the best price, imports filing, costs estimating, quality of the product[.]
- [D]ecide and coordinate the freight forwarder, coordinate the requests specially from Venezuela.
- [N]egotiate the sales of [the company's] products and deal with the customer the best price [sic], sale techniques for the growth of the business [sic].

The August 25, 2003 letter and a copy of the beneficiary's resume also indicate that the beneficiary was employed in "2001-2003" as an administrative manager or editor at an entity named [REDACTED] in Miami, Florida.

On February 23, 2004, the director issued a request for further evidence. The director noted that the evidence of record at that time did not establish that the beneficiary was employed by a qualifying organization abroad for one year out of the three years prior to the filing of the petition. Accordingly, the director requested:

- The official payroll records for the beneficiary showing that she was employed by the foreign entity for one continuous full year between October 1, 2000 and October 1, 2003.
- A detailed letter from the company abroad outlining the specific duties performed by the beneficiary during her employment abroad, including positions of employees in which she supervised and copies of their degrees.
- A copy of the petitioner's new lease covering at least one year.
- Previous approval notices for all prior H-1B petitions.

In a letter dated May 17, 2004 responding to the director's request, the petitioner stated that the beneficiary was employed by the foreign entity from 2000 to 2003 in the position of international operation manager. The petitioner repeated the previous job description, adding that the beneficiary also was responsible for "management of international clients." The petitioner also indicated that the beneficiary traveled to Venezuela on a regular basis and spent her remaining time in Miami to fulfill her duties in her position as administrative manager at Hispanic Magazine as well as other duties for the foreign entity such as "reviewing of informs of the employees in charged [sic], supervising subordinated personnel, decision making, business contacts."

The petitioner submitted copies of (1) the foreign entity's payroll records from January 2000 through October 2003; (2) a letter from the foreign entity certifying that it employed the beneficiary from 2000 through 2003; (3) approval notices for H-1B visas for the beneficiary from October 12, 1997 through August 29, 2000, with [REDACTED] as employer, and from January 19, 2001 through October 1, 2003, with [REDACTED] as employer; (4) the beneficiary's passport; (5) a lease for premises for the petitioner for the term from January 1, 2003 through December 31, 2004; (6) an organizational chart for the foreign entity showing the beneficiary as international operations manager, and under her supervision, a named employee responsible for projects and budgets, and two positions for customer service and technical specialist (no individual names were listed under these positions); and (7) resumes and educational certifications for the beneficiary's subordinate responsible for projects and budgets and two other employees who are not under the beneficiary's supervision.

On October 20, 2004, the director denied the petition, concluding that the petitioner has failed to show that the beneficiary was employed abroad in a primarily managerial or executive capacity for one continuous year in the three years prior to the filing of the petition. Specifically, the director noted that the record shows that the beneficiary has been in H-1B status since 1997 with only brief trips to Venezuela. The director observed that during the three years prior to filing, the beneficiary's total time out of the United States was only approximately two to three months. Therefore, the director concluded, the beneficiary could not have been employed abroad for one continuous year prior to the filing of the petition.

On appeal, the petitioner asserts that the beneficiary has met the "employment abroad" requirement because she "has been employed by the company [REDACTED] under a H1B nonimmigrant visa for a

period of time of three years and . . . during this period she has also been a part-time employee for the [foreign entity] since 2000, who owns [REDACTED] in the U.S.A."

On review, the petitioner's assertion on appeal is not persuasive. The regulations governing L-1 visas require the petitioner to show 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." 8 C.F.R. § 214.2(l)(3)(iii) (emphasis added). The beneficiary's employment arrangement with the foreign entity fails to satisfy that requirement. As the petitioner states on appeal, the beneficiary's employment with the foreign entity is part-time rather than full-time. Moreover, as the director observed, the record shows that the beneficiary has been based in the United States, on an H-1B visa, since 1997, with only brief trips to Venezuela totaling two to three months over the course of the three years preceding the filing of the petition. As such, that particular period of employment does not constitute the required "one continuous year of full-time employment abroad." *Id.*

The AAO notes that the regulatory definition of "intra-company transferee" clarifies that "[p]eriods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate or subsidiary thereof . . . shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement." 8 C.F.R. § 214.2(l)(1)(ii)(A). However, the petitioner has failed to submit any evidence that the beneficiary's other employer during that period, [REDACTED], is indeed a subsidiary of the foreign entity, as the petitioner claims. Even if that corporate relationship were sufficiently documented, the petitioner's claim would still fail because the period during which the beneficiary worked for that employer, in this case the entire three years preceding the filing of the petition, would not be counted toward fulfillment of the one-out-of-three-year requirement, pursuant to the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A).

Based on the foregoing, the AAO concurs with the director's conclusion that the petitioner has failed to show that the beneficiary was employed abroad in a primarily managerial or executive capacity for one continuous year in the three years prior to the filing of the petition, as required by the regulations.

Beyond the director's decision, the AAO also finds that the petitioner has failed to show that the beneficiary was employed by the foreign entity in a managerial or executive capacity as required under the regulation at 8 C.F.R. § 214.2(l)(3)(iv). First, the petitioner has provided inconsistent information regarding the beneficiary's position with the foreign entity. In the initial petition and support letter, the petitioner described the beneficiary as a "purchase manager and imports coordinator" who performs tasks directly related to providing the company's services such as dealing with suppliers, pricing, imports filing, costs estimating, coordinating the freight forwarder, negotiating sales and providing customer service. In response to the director's request for further evidence, however, the petitioner stated that the beneficiary is the foreign entity's "international operations manager," and in addition to the previously described tasks, the petitioner indicated that the beneficiary's duties also include "management of international clients," "supervising subordinated personnel," "decision making," and "business contacts." The petitioner has provided no explanation for these inconsistencies in the beneficiary's job title and description. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, if the beneficiary actually

performs the tasks described as her responsibilities as a "purchase manager and imports coordinator," she is performing tasks necessary to provide a service or product that are not considered managerial or executive in nature. Without further details regarding her job duties, it cannot be determined whether her time is primarily spent on these non-qualifying tasks or on the managerial functions to which the petitioner alluded in the later job description. 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Moreover, the petitioner also claims that the beneficiary supervises other personnel. Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. In this instance, despite the director's request for further evidence regarding the positions and educational levels of the beneficiary's subordinates that the director requested, the beneficiary provided a resume, with no other information, for only one out of the three employees listed as the beneficiary's subordinates on the foreign entity's organizational chart. Without further information, it cannot be determined whether the beneficiary's subordinate employees actually function in a supervisory, professional, or managerial capacity. Thus, the evidence of record is insufficient to show that the beneficiary supervises subordinate employees who are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act. Furthermore, any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In light of the foregoing, the AAO also finds that the petitioner has failed to establish that the beneficiary was employed abroad in a managerial or executive capacity. For this additional reason, the petition will not be approved.

In addition, the AAO finds that the record is insufficient to demonstrate that there exists a qualifying relationship between the foreign entity and the U.S. entity as required under 8 C.F.R. § 214.2(l)(3)(i). On the Form I-129, the petitioner indicated that the U.S. entity is a subsidiary of the foreign entity, but no further detail regarding the foreign entity's ownership interest in the U.S. entity was provided. The petitioner submitted a business plan which states that the foreign entity owns 52% of the U.S. entity, and the remaining 48% is owned by the president of the company. However, the record contains no documentation whatsoever of the described ownership of the U.S. entity. 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)). For this additional reason, the petition will not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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.