

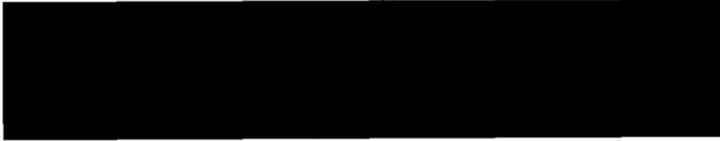
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U.S. Citizenship
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Services

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FILE: SRC 04 016 50215 Office: TEXAS SERVICE CENTER Date: MAR 31 2006

IN RE: Petitioner:
Beneficiary:



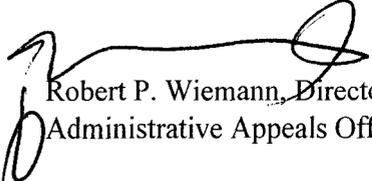
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

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 appeal will be summarily dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its director as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). The petitioner claims to provide budget, business planning and management services. It processes mortgage loans. The petitioner claims that it is a branch of [REDACTED] and [REDACTED] located in Caracas, Venezuela. The beneficiary was initially granted a one-year period in L-1A status in order to open a new office in the United States and the petitioner now seeks to extend her status for three additional years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. Specifically, the director noted the petitioner's lack of payroll employees, and found that the record did not sufficiently establish how the beneficiary supervises the independent contracts utilized by the company. The director therefore found insufficient evidence to establish that the beneficiary would be relieved from performing the non-qualifying duties of the company, such that she could engage in primarily managerial or executive duties.

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 does not dispute the director's findings or assert that the decision was based on an erroneous conclusion of fact or law. In a letter dated October 12, 2004, the petitioner states that the U.S. company has been restructured and the beneficiary presently manages the supervisors of four departments, including an administrative department, sales department, operations department, and "countable" department. Three of the four department supervisors were not previously identified on the petitioner's organizational chart or wage records. The administrative department "supervisor" was previously identified as an "administrative assistant" on the petitioner's organizational chart; however, the petitioner has not provided evidence that this employee worked for the petitioner as of the date the petition was filed on October 21, 2003. The petitioner notes that the company intends to open a branch office in Tallahassee, Florida, and that the beneficiary will serve as "Manager General" of the new branch. The petitioner submits a revised organizational chart, dated June 30, 2004, in support of the appeal.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The petitioner's statements on appeal regarding the petitioner's current staffing levels, recent company restructuring, and intentions to open a second office have no bearing on a determination as to the petitioner's and beneficiary's eligibility as of the date this petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N

Dec. 248 (Reg. Comm. 1978). Furthermore, with respect to the petitioner's intention to employ the beneficiary as "manager general" of a new branch office, the AAO notes that a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Id.* at 249. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The record shows that, at the time of filing, the petitioner employed the beneficiary as "director," a president who was paid on commission as a loan officer/mortgage broker, and three to four additional loan officers paid on commission as independent contractors in amounts ranging from \$1,951.25 to \$7,479.88 for the 2003 year. The petitioner's organizational chart submitted in response to the director's request for evidence showed that the company had position openings for a loan coordinator, a processor manager, and two loan processors, but the petitioner did not identify who was currently performing loan coordination and loan processing functions for the organization. The organizational chart also identified an administrative assistant, but there is no evidence that this position was staffed at the time the petition was filed. Collectively, the lack of employees to perform everyday administrative and operational duties brought into question how much of the beneficiary's time could realistically be devoted to the claimed managerial or executive duties that were vaguely outlined by the petitioner. 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).

Accordingly, the AAO concurs with the director's determination that the petitioner did not establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The petitioner indicated that it planned to hire additional managers and employees in the future, and now, on appeal, claims to have hired additional staff. However, 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 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.

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 the petitioner 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.