

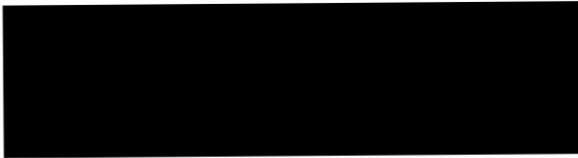


U.S. Citizenship  
and Immigration  
Services

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File: SRC 04 221 51554 Office: TEXAS SERVICE CENTER Date: SEP 14 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)

IN 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director of the Texas Service Center denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a new office operating as a convenience store. It seeks to employ the beneficiary as its president/general 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 wholly owned subsidiary of Telas La Decorativa, C.A., located in Zulia State, Venezuela.

The director denied the petition after determining that the petitioner has not sufficiently demonstrated that the beneficiary was employed abroad in a primarily managerial or executive capacity for one continuous year out of the three years preceding 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 the evidence does demonstrate that the beneficiary functioned in an executive capacity in her previous employment with the foreign entity. The petitioner elaborates upon the beneficiary's overseas employment in a letter accompanying the Form I-290B, Notice of Appeal.

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 a letter from the petitioner dated July 24, 2004, submitted with the initial petition, the petitioner indicates that the beneficiary has been employed by the foreign entity since February 13, 1997 as a vice president of the company. In an attachment to the Form I-129, Petition for a Nonimmigrant Worker, the petitioner described the beneficiary's position with the foreign entity as "administrator" and stated her duties as follow:

1. Coordination, management and supervision of the account and financial department of the entity.
2. Responsible for the accounts collections, payments of providers and the timely compliance of them[.]
3. Authority to supervise others employees [sic] that work in the area.
4. Authority to set the standards for a reasonable accountant practices [sic] in the entity[.]
5. The maximum authority in the entity. [sic]

On August 26, 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:

- A description of the duties and educational background of the foreign entity's other employees
- The foreign entity's organizational chart
- An explanation of how the beneficiary was engaged primarily in managerial or executive duties rather than in the day to day operations of the business
- Evidence that the beneficiary was managing other managers and professionals
- The foreign entity's payroll records from August 13, 2001 to August 13, 2004

In an undated letter responding to the director's request, the petitioner stated that the beneficiary had come to the United States for a six-month vacation, which was extended for another six months; no dates were given for this vacation period. The petitioner claimed that during that time, the beneficiary sent daily instructions to her managers and communicated by phone and email frequently with her employer. The petitioner provided an organizational chart of the foreign entity showing that the beneficiary supervised four employees with the titles of "sales wholesale," "sales detail," and two "sellers" (who are subordinates of the "sales detail" employee). The petitioner also provided a chart of educational background stating only that three of the beneficiary's subordinates were trained in accounting and one in computer technology, without any indication of their level of education. The petitioner submitted a copy of the beneficiary's resume, which indicates that the beneficiary was employed by the foreign entity from 1997 to "the present" in the position of president/general manager. The petitioner stated in the response letter that a copy of the foreign entity's payroll showing wages paid to the beneficiary during the requested period was included with the submission; however, the AAO did not find any such documentation in the record.

On October 8, 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 beneficiary did not manage other managers or professionals within the foreign entity, and that her duties and responsibilities in the United States will be significantly different from those with the foreign entity.

On appeal, the petitioner asserts that the director's finding that the beneficiary's duties and responsibilities in the United States will be significantly different from those with the foreign entity is not relevant because the beneficiary does not have to render her services in the same capacity in the United States as that abroad. In a letter accompanying the Form I-290B, Notice of Appeal, the petitioner claims that the beneficiary functioned in an executive capacity abroad and elaborates upon the beneficiary's qualifications and job duties in her position with the foreign entity in support of that claim. The petitioner also contends that the beneficiary supervises two managers in sales who in turn have their own subordinates.

Initially, the AAO acknowledges that the regulations allow that "the work in the United States need not be the same work which the alien performed abroad." 8 C.F.R. § 214.2(l)(3)(iv). The AAO also notes that the information provided in response to the director's request for further evidence does indicate that one of the beneficiary's subordinates in the foreign entity supervises two other subordinate employees. However, notwithstanding the foregoing, the AAO still finds the record insufficient to show that the beneficiary 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 in a managerial or executive capacity, as required under 8 C.F.R. § 214.2(l)(3).

The petitioner has failed to show that the beneficiary was employed abroad with a qualifying organization for the requisite time period. While the petitioner claimed that the beneficiary has been employed by the foreign entity since February 2000, the petitioner has failed to provide any proof of this claim. The director requested the payroll records for the three year period immediately preceding the filing of the petition, but the petitioner did not provide the requested documentation. This evidence is critical as it would have established whether or not the beneficiary was indeed employed by the foreign entity during that time period as claimed. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The 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).

Moreover, the record is insufficient to establish that the beneficiary was employed overseas in a primarily executive or managerial capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* In the initial petition, the petitioner described the beneficiary's job duties in general terms such as "coordination, management and supervision of the account and financial department," "responsible for the accounts collections, payments of providers and the timely compliance of them," and ascribes to her the authority to "supervise others employees" and "set the standards for ... reasonable accountant practices." This description is vague and nonspecific and fails to demonstrate what the beneficiary does on a day-to-day basis. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? 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).

The AAO further notes that the petitioner's July 24, 2004 letter and the foreign entity's organizational chart state that the beneficiary has been employed by the foreign entity since 2000 as vice president of sales. However, the beneficiary's resume states that she has been employed by the foreign entity since 1997, and states her title as "president/general manager." The petitioner has not clarified or explained this discrepancy. 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).

In light of the foregoing, the AAO concurs with the director's conclusion that the petitioner has failed to establish that the beneficiary was employed abroad in a managerial or executive capacity for one continuous year in the three years prior to the filing of the petition, as required under 8 C.F.R. § 214.2(l)(3).

Beyond the director's decision, 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). The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between the U.S. and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm. 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). Ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595. On the L Supplement to Form I-129, the petitioner claimed that the U.S. entity is 100% owned by the foreign entity. However, the petitioner has provided no documentation whatsoever in support of this claim regarding ownership in 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 may not be approved.

In addition, the petitioner has not established that it has secured sufficient physical premises to house the new office pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(vi)(A). The petitioner submitted a copy of a lease for premises at [REDACTED]. However, this address is not the same as the address provided as the petitioner's address on the Form I-129 and elsewhere in the record. In fact, the only other place this address appears is as the home address on the beneficiary's resume. In addition, while the lease term is stated as May 5, 2004 to May 5, 2007, the document states that the lease is "made and effective May, 05 2005 [sic]." Moreover, the bottom of each page of the lease indicates that it is only a draft and not a finalized document. The petitioner has not explained or addressed these inconsistencies anywhere in the record. As previously noted, 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. at 591-92. The petitioner also has not described the anticipated space requirements for its business, nor does the lease in question specify the amount or type of space secured. In light of these deficiencies in the record, the Citizenship and Immigration Services (CIS) cannot determine whether the petitioner has secured sufficient space to house the new office. For this additional reason, the petition may 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.