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U.S. Citizenship  
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File: SRC 04 159 50529 Office: TEXAS SERVICE CENTER Date: FEB 12 2007

IN RE: Petitioner:  
Beneficiary:



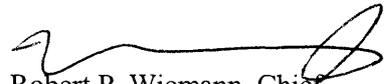
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



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 filed this nonimmigrant petition seeking to extend the employment of its general manager 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 is a corporation organized in the State of Florida that is engaged in the consulting, design and sale of advertising. The petitioner claims that it is the wholly owned subsidiary of Quiksignos S.A., located in Ecuador. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Specifically, the director determined that the record is insufficient to show that the beneficiary supervises subordinate managerial employees who would relieve him from performing non-qualifying duties. The director further concluded that the record does not demonstrate that as of the filing of the petition, the U.S. entity has grown to a point where it could remunerate the beneficiary, or where the beneficiary would function at a senior level within the organizational hierarchy or with respect to a function.

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, counsel for the petitioner contends that the director's decision is in error. Counsel asserts that the beneficiary supervises two employees with managerial titles and is not performing day-to-day operations of the U.S. entity. Counsel further asserts that the evidence shows that the U.S. entity has grown to a point where it could remunerate the beneficiary as well as the subordinate employees. Counsel resubmits some of the evidence previously provided in support of these assertions.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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) also 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 managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

At issue in the present matter is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as

promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Along with the initial petition, the petitioner submitted the following description of the beneficiary's job duties:

**Overall Assignments**

- Develops and implements policies to maximize revenues, accounts, credits, loans and services.
- Building the financial and operational models required for the company to succeed.
- Expanding the founding team to position the company for growth
- Oversees all operations of the company and establishes priorities among competing opportunities.

**Program Development and Strategic Planning**

- Establishes the strategic direction for [the U.S. company]
- Provides leadership to implement the strategic direction and achieve the organization's goal
- Evaluates and improves existing accounts in terms of cost and efficiency and develops new planning strategies.
- Identifies and access[es] resources to improve overall commercial activities effectiveness.

### **Operations**

- Manages operations of [the U.S. company's] investment
- Plans business objectives, develops organizational policies to coordinate functions between employees, and to establish responsibilities and procedures for attaining objectives and revises objectives and plans in accordance with current conditions.
- Review projects proposals or plan to determine time frame, funding limitations, procedures for accomplishing project, staffing requirements.
- Develops an action plan and staffing for development of current and new contracts and accounts.
- Exercises complete authority over personnel, including evaluation of performance, hiring and dismissals.
- Report directly to board of directors.

### **Financial Oversight and Management**

- Directs financial activities and establishes short and long-term financial goals.
- Prepares and manages annual budgets. Has full responsibility for the company's profit and loss statements.
- Tracks and monitors expenditures on an ongoing basis.

### **External Relations**

- Cultivates and manages relationships with key stockholders and constituents within the local and international business and economic community, and in the state and federal governments.
- Represents General Power [sic] on and at local and international economic development boards and events.
- Meets with official visitors.

In a letter dated May 12, 2004 accompanying the petition, the petitioner stated that in addition to the beneficiary, the staff also includes a public relations manager, a sales manager and an accountant.

On July 3, 2004, the director requested additional evidence. Specifically, the director requested (1) an organization chart, (2) a description of the current staff of the U.S. company, including staffing levels, names, titles, duties, qualifications, hours worked per week and date hired, and (3) W-2 forms for the previous year for all employees. The director also requested a description of the beneficiary's duties broken down by percentage of time, listing specific duties and number of employees supervised, and explaining how the beneficiary's duties differ from those of other managers and executives within the company. The director also requested clarification of information previously provided relating to wages paid by the company during 2003, as well as evidence of business conducted during the preceding three months.

In a letter dated September 30, 2004 responding to the request for further evidence, counsel for the petitioner stated that in addition to the beneficiary who works full-time, the U.S. entity has two other permanent employees – an administrative/public relations manager and a sales/operations manager – each of whom works 20 hours per week. In addition, counsel indicates that the company uses sub-contractors, including the company's accountant, a number of companies that provide advertising, marketing, and other key services,

and several independent contractors who engage in the sale of the company's products. The petitioner submitted a list of eight companies and individuals who are independent contractors and distributors. The petitioner provided the same description of the beneficiary's job duties that was previously submitted, with the following percentages of time spent performing each category of duties:

- Overall Assignments (20%)
- Program Development and Strategic Planning (20%)
- Operations (40%)
- Financial Oversight and Management (15%)
- External Relations (5%)

The petitioner also provided an organizational chart, which shows the beneficiary directly overseeing the accountant, an entity named "[REDACTED]" the administrative/public relations manager (who supervises "sub-contractors"), and the sales/operations manager (who supervises "independent contractors"). The petitioner included descriptions of job duties for the two managers and the accountant. Counsel states in his letter that both of the managers under the beneficiary hold bachelor's degrees in business administration and economics, and that they conduct the company's day-to-day business. Finally, the petitioner also submitted Forms W-2 for the year 2003 for the beneficiary and the two managers.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Specifically, the director determined that the record is insufficient to show that the beneficiary supervises subordinate managerial employees who would relieve him from performing non-qualifying duties. The director further concluded that the record does not demonstrate that as of the filing of the petition, the U.S. entity has grown to a point where it could remunerate the beneficiary, or where the beneficiary would function at a senior level within the organizational hierarchy or with respect to a function.

On appeal, counsel for the petitioner contends that the director's decision is in error. Counsel asserts that the beneficiary supervises two employees with managerial titles and is not performing day-to-day operations of the U.S. entity. Counsel further asserts that the evidence shows that the U.S. entity has grown to a point where it can remunerate the beneficiary as well as the subordinate employees. Counsel states in conclusion that the description of the beneficiary's job duties and other supporting evidence demonstrates that the beneficiary was employed in a primarily managerial capacity.

On reviewing the petition and the evidence, the AAO concurs with the director's conclusion that the petitioner has not established that the beneficiary would be employed in the U.S. in a managerial or executive 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.*

While the petitioner provided a lengthy list of duties for the beneficiary, upon closer inspection, the duties are described in broad and vague terms. For example, the petitioner states that the beneficiary "[d]evelops and implements policies to maximize revenues, accounts, credits, loans and services," "[o]versees all operations of

the company," "[e]stablishes the strategic direction for [the U.S. company]," and "[provides] leadership to implement the strategic direction and achieve the organization's goal." The petitioner does not elaborate upon what the company's goals, policies, or strategies are, or provide specifics that might shed light upon what the beneficiary actually does on a daily 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).

Moreover, certain details of the job description provided by the petitioner lead the AAO to question the veracity of that description, as the details in question do not seem to pertain to the beneficiary or U.S. entity in this matter. For example, the document states that the beneficiary "[r]epresents General Power [sic] on and at local and international economic development boards and events." The AAO is not aware, based on the record, that "General Power" is another name for the U.S. entity or any entity relevant to this matter. In addition, the description indicates that the beneficiary "[c]ultivates and manages relationships with key stockholders," where it is claimed elsewhere in the record that the foreign entity is the sole shareholder of the U.S. entity. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In addition, although the beneficiary is not required to supervise personnel, if it is claimed that his 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. Here, as discussed *infra*, the evidence does not demonstrate that the beneficiary supervises employees who are supervisory, professional, or managerial, as required by the Act.

Initially, it is noted that the petitioner claims to utilize the services of a number of independent distributors as well as independent consultants in the areas of accounting and computer support. However, the petitioner has neither presented evidence to document the existence of these independent contractors and consultants nor explained how the services of these contractors obviate the need for the beneficiary to primarily conduct the petitioner's business. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998).

The petitioner does indicate that there are two part-time employees working under the beneficiary, namely the administrative/public relations manager and the sales/operations manager. However, the record does not support the conclusion that these subordinate employees actually supervise or manage other employees or otherwise function in a supervisory or managerial capacity. The job description for the administrative/public relations manager indicates that she herself performs the company's administrative tasks, such as data input, mail processing, answering the telephone, and running errands, rather than supervises or manages other employees in such tasks. The sales/operations manager is described as "managing sales activities of the company," among other things. However, as previously noted, there is insufficient evidence to show that there are other employees or independent contractors to perform the sales function. Moreover, even assuming the existence of the independent contractors, the petitioner specifically stated that they report directly to the beneficiary rather than to these managers. As such, the evidence does not show that the beneficiary is more

than a first-line supervisor, and a first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Although counsel claims that the beneficiary's two subordinate employees both have bachelor's degrees, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that an advanced degree is actually necessary, for example, to perform the secretarial and administrative work of the administrative/public relations manager, who is among the beneficiary's subordinates.<sup>1</sup> In all, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

In light of the foregoing, the AAO concurs with the director's conclusion that the petitioner has failed to establish that the beneficiary would be employed in the U.S. in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(ii).

Beyond the decision of the director, the AAO finds that the record is insufficient to establish that a qualifying relationship exists between the foreign and U.S. entities 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.

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<sup>1</sup> The AAO also notes that there is no evidence in the record to support counsel's claim regarding the subordinate employees' educational background. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Here, the petitioner has not provided any documentation relating to the legal formation or current status of either the U.S. entity or the foreign entity, such as the articles of incorporations and by-laws or equivalent documentation. Without evidence confirming that the two companies are existing legal entities, the AAO cannot conclude that the two entities are "qualifying organizations" as defined under the regulations at 8 C.F.R. § 214.2(l)(1)(ii).

Moreover, while the petitioner claimed on the L Supplement to Form I-129 that the U.S. entity is a wholly-owned subsidiary of the foreign entity, the petitioner has not provided sufficient documentation to support that claim. The petitioner did submit its Internal Revenue Service Form 1120, U.S. Corporation Income Tax Return, for the year 2003, Schedule K of which indicates that the company is 100% owned by the foreign entity. However, this disclosure describes the ownership of the U.S. company only during the time period covered in the tax return, namely the year 2003, and not necessarily at the time the petition was filed. The petitioner provided no evidence of ownership interest in the U.S. entity as of the time of filing. Moreover, the tax return alone cannot be deemed sufficient evidence to determine the ownership and control of a corporate entity. The corporate stock certificate, stock ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control. For this additional reason, the petition will be denied.

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.