

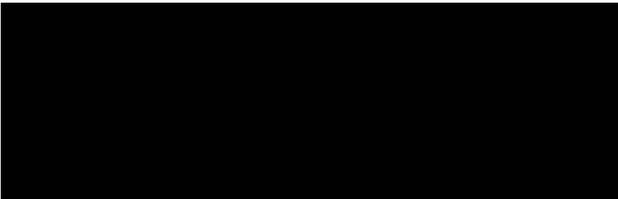
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals* MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



D7

File: EAC 08 049 50758    Office: VERMONT SERVICE CENTER    Date: **APR 28 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center, denied the nonimmigrant visa petition. 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 chief executive officer 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, a Georgia limited liability company, operates a restaurant. The beneficiary has been employed as the petitioner's president in L-1A status since December 2002, and the petitioner now seeks to extend his status for two additional years.

The director denied the petition on August 5, 2008, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition. In denying the petition, the director observed that the petitioner failed to provide a detailed description of the beneficiary's duties sufficient to establish that his actual duties would be primarily managerial or executive in nature. The director also emphasized that the petitioner appears to employ only a few part-time workers in addition to the beneficiary, and failed to clearly document the names, job titles and job duties of the beneficiary's subordinates. The director concluded that the petitioner failed to establish that the beneficiary would be relieved from primarily performing non-managerial duties associated with operating the petitioner's restaurant.

**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 submits: (1) the U.S. company's year-to-date payroll ledger for the first six months of 2008; (2) its state quarterly wage report for the first quarter of 2008; (3) a 2008 organizational chart that is identical to the 2007 organizational chart previously submitted; and (4) brief job descriptions for the positions of chief executive officer, operations and shift manager, cook, waiters, kitchen helpers and administration, which were also previously submitted. The petitioner indicates on Form I-290B, Notice of Appeal or Motion, that the supporting documents are "evidence of employment structure of the company, including names of the employees, their duties and wages."

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.

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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. On appeal, the petitioner has not identified an erroneous conclusion of law or statement of fact on the part of the director. Nor has the petitioner specifically addressed the deficiencies that were discussed at length in the director's

decision, namely, the petitioner's failure to provide a detailed description of the beneficiary's duties, and its failure to describe with specificity the staffing structure in place at the time the petition was filed. Rather, the petitioner re-submits evidence that was previously submitted and already found to be deficient, as well as evidence of wages paid to employees subsequent to the filing of the petition. 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). Moreover, although the new evidence shows that the petitioner paid a total of seven employees during the first quarter of 2008, it also demonstrates that the beneficiary was the sole employee paid by the petitioner during the second quarter of 2008. The petitioner provides no explanation for the dramatic decrease in its staffing levels between March and April 2008.

The AAO concurs with the director's conclusion that the petitioner did not provide an adequate description of the beneficiary's duties. The petitioner indicates that the beneficiary will devote 30 percent of his time to "control and direct the management of the company," 20 percent of his time to "control the execution of the business plans," and 15 percent of his time to "control the major functions of the company." These broad statements provide no insight into the specific tasks the beneficiary performs on a day-to-day basis within the context of the petitioner's business. 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 provide any detail or explanation of the beneficiary's activities in the course of his daily routine. 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 petitioner has not sought to clarify the beneficiary's responsibilities on appeal.

Furthermore, the AAO concurs with the director's conclusion that the petitioner has not adequately documented its staffing levels and organizational structure as of the date of filing. The petitioner submitted an organizational chart depicting the beneficiary as chief executive officer, an operations and shift manager who reports to the beneficiary, and three to four wait staff and contracted "kitchen helpers" who report to the operations and shift manager. The petitioner also submitted position descriptions for the position of operations and shift manager, cook, waiters, kitchen helpers and administration, although two of these positions, the cook and the administrative employee, were not depicted on the organizational chart. The petitioner did not identify the names of any individual employees on the organizational chart. Thus, while it appears that the petitioner employed a total of five employees at some point during the last quarter of 2007, it is impossible to determine which positions were actually filled. Moreover, as noted by the director, none of the company's employees earned wages consistent with full-time employment. The highest paid employee in the company, other than the beneficiary, earned only \$3,741 in 2007. 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)).

A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9<sup>th</sup> Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42

(2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

At the time of filing, the petitioner was a six-year-old company engaged in the operation of a full-service restaurant. The firm employed the beneficiary as chief executive officer, plus up to four part-time employees whose job titles and duties have not been clarified. The petitioner has a reasonable need for employees to purchase inventory and supplies, prepare and cook food, greet customers, wait on tables, clear tables, operate a cash register, clean the kitchen and dining areas, and handle day-to-day finance and administrative functions, such as payroll and bookkeeping. The petitioner has not established how four part-time employees could relieve the beneficiary from participating in the day-to-day, non-managerial functions of the restaurant. Rather, it is evident that the petitioner would require the beneficiary's regular participation in such functions in order for the business to remain operational. Based on the petitioner's organizational chart, it does not appear that the restaurant even employs a cook, and the record is void of any evidence paid to the claimed "contractors" who work in the kitchen. The petitioner has not established that it has a reasonable need for the beneficiary, its only full-time employee, to be primarily engaged in managerial or executive duties.

The petitioner must establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

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 not identified specifically an erroneous conclusion of law or statement of fact in support of the appeal, the appeal must be summarily dismissed.

**ORDER:** The appeal is summarily dismissed.