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U.S. Department of Homeland Security  
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street NW  
Washington, DC 20536



FILE: WAC 01 199 54370 Office: CALIFORNIA SERVICE CENTER Date: DEC 08 2003

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:  
[Redacted]

**INSTRUCTIONS:**

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, [REDACTED] Inc., avers that it is a wholly-owned subsidiary of a Japanese business, [REDACTED] Ltd. The petitioner states that it imports and wholesales fabric to and from Japan. The petitioner now endeavors to hire the beneficiary as a new employee. Consequently, in May 2001, the U.S. entity filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee (L-1). The petitioner seeks to employ the beneficiary as the U.S. entity's president at an annual salary of \$126,000. On January 25, 2002, the director concluded that, within the three years preceding the beneficiary's application for admission into the United States, the foreign entity did not employ the beneficiary in a qualifying managerial or executive capacity for one continuous year. Consequently, the director denied the petition.

On appeal, the petitioner's counsel asserts that, within the three years preceding the beneficiary's application for admission into the United States, the foreign entity employed the beneficiary in a qualifying managerial or executive capacity for one continuous year.

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 meet certain criteria. 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. Furthermore, 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.

Under 8 C.F.R. § 214.2(1)(3), 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 (1)(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.

In this matter, the petitioner does not assert that the beneficiary carried out executive duties; instead, the petitioner claims only that the beneficiary primarily performed managerial functions. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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.

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(1)(3)(ii). On Form I-129, the petitioner stated that, within the three years preceding the application for admission into the United States, the beneficiary performed the following duties for one continuous year:

- Exercise[d] full executive authority to negotiate and enter into contracts;
- Oversaw the activities of the parent company;
- [Was i]n charge of the day-to-day operation with full power over personnel management; [and]
- Establish[ed] and develop[ed] new U.S. Operations.

In response to the director's July 18, 2001 request for evidence, the petitioner elaborated on the beneficiary's duties on behalf of the overseas organization:

While with the foreign company, [the beneficiary] was a Division Manager responsible for overseeing the outsourcing of temporary workers to various organizations. He kept in close touch with these employers to provide additional support and to monitor [the] performance of the outsourced workers.

\* \* \*

[The beneficiary] spent about thirty-percent (30%) of the time providing support to clients and ensuring the outsourced workers were performing at their peak [sic]

efficiency while about forty-percent (40%) of his time was spent on interviewing new workers and placing them with various organizations. The remaining time was devoted to accounting activities, which included calculating payroll for employees as well as preparing financial and expense reports to [sic] the company president.

The beneficiary's duties for the overseas entity appear to have comprised tasks necessary to produce a product or provide services. For instance, the beneficiary spent 40 percent of his time providing clients with temporary workers whom he had interviewed and 30 percent of his time ensuring that the temporary workers met client expectations. Furthermore, the beneficiary spent the remaining 30 percent of his time conducting such non-managerial tasks as calculating payroll for employees and preparing internal financial and expense reports. An employee who primarily performs the tasks necessary to produce a product or provide services is not considered to be employed in a managerial capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

On appeal, the petitioner's counsel asserts that a letter from the overseas entity's president "never mentions the beneficiary in a position of directly providing the services of the business." CIS looks beyond job titles, however, to determine whether a beneficiary performs managerial duties. Moreover, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In sum, the record lacks adequate supporting documentary evidence to demonstrate that the beneficiary's duties for the overseas entity were primarily managerial.

Beyond the decision of the director, the AAO notes that the petitioner's recitation of the proposed duties is so vague that it fails to convey an understanding of the beneficiary's planned daily responsibilities for the U.S. entity. For example, on the Form I-129, the petitioner depicted the proposed duties as:

- Establish, develop, and control [the] U.S. Operation;
- [Be i]n charge of daily operations as well as exercis[e] executive control;

- Direct and train new employees; [and]
- Represent the company in contract negotiations.

The petitioner does not explain the meaning of "establish[ing], develop[ing], and contol[ling] U.S. Operation[s]." Additionally, the petitioner gives no concrete examples to define "represent[ing] the company in contract negotiations." Going on record without supporting documentary evidence is insufficient for the purpose of meeting the burden of proof in these proceedings. *Ikea US, Inc. v. INS*, 48 F. Supp. 2d 22, 24-5 (D.D.C. 1999); see generally *Republic of Transkei v. INS*, 923 F.2d 175 (D.C. Cir. 1991) (discussing burden the petitioner must meet to demonstrate that the beneficiary qualifies as primarily managerial or executive); *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The beneficiary's proposed duties are, therefore, so undefined that it is impossible for CIS to determine whether the beneficiary would be employed in a primarily managerial or executive position. However, as the appeal will be dismissed, the AAO will not examine this issue any further.

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.