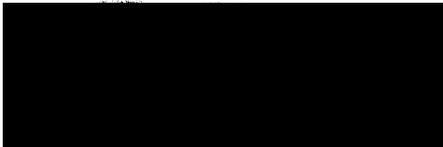


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U.S. Department of Homeland Security  
Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536



DEC 12 2003

FILE: LIN-02-243-55070 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for 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-PETITIONER

Identifying data deleted to  
protect privacy  
Invitation of privacy

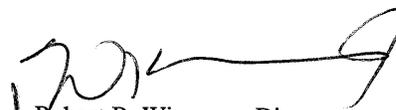
INSTRUCTIONS:

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 the 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, Nebraska 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 is a manufacturer of retractable awnings, and seeks to temporarily employ the beneficiary in the United States as a manager. The petitioner filed a petition requesting the beneficiary be classified as an intracompany transferee. The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed as a manager or an executive in the U.S. company.

In a timely appeal, the petitioner submitted a letter in which it outlined the requirements for a manager, as stated in the regulations, and identified how the beneficiary's proposed job responsibilities will be of a managerial nature.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (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(1)(3) further 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 (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.

The issue in this proceeding is whether the beneficiary will be employed in the U.S. office in a managerial or executive capacity.

In the petition, the petitioner identified the beneficiary's proposed job duties in the United States as hiring and supervising employees, creating sales accounts, and marketing and advertising for the company. The petitioner declared that it currently employed ten individuals. In support of the petition, the petitioner submitted, among other things, the beneficiary's curriculum vitae, which identified the beneficiary as a high school graduate with six years of management experience, and a verification of the beneficiary's employment with the foreign company.

The director issued a request for additional evidence, in which she asked that the petitioner submit the following information: (1) evidence that the beneficiary's job duties meet the criteria of "managerial capacity;" (2) a detailed statement describing the beneficiary's employment abroad and the intended employment in the United States, including specific job duties, the job titles of employees supervised, and the title and level of authority of the beneficiary's immediate supervisor; (3) an organizational chart reflecting the beneficiary's current and proposed positions; and, (4) evidence that the foreign and U.S. companies are qualifying organizations.

In response to the request, the petitioner submitted a letter explaining the corporate structure and relationship of the foreign and U.S. companies, and describing the beneficiary's previous and proposed job duties. The petitioner noted that the beneficiary would act as manager of operations and sales accounts while employed in the United States. His responsibilities would include:

the hiring and supervision of future sales employees, creating sales accounts, and director of marketing and advertising. Another critically important aspect of his responsibilities will be communication to our mother company in Germany such as, financial reporting, supervision of orders, customs handling, and the daily communication, which can be very difficult when dealing in [two] different languages. The employees to be supervised are mainly future sales associates.

The petitioner also submitted organizational charts of the foreign and U.S. companies. The beneficiary was named as manager of the sales and marketing department of the U.S. company, and, according to the chart, was required to report to the president of the petitioning organization. The beneficiary's subordinates include a supervisor and an unidentified number of sales representatives. The petitioner did not provide any information pertaining to the job duties or qualifications of the beneficiary's subordinates.

In her decision, the director denied the petition concluding that the petitioner did not establish that the beneficiary would be working in a primarily managerial or executive capacity. The director noted that the beneficiary would not be relieved from performing daily job duties pertaining to the sales and marketing functions, and that there was no conclusive evidence that the petitioner presently employed any sales representatives. Consequently, the director determined that the beneficiary did not qualify as a managerial intracompany transferee.

On appeal, the petitioner submitted a letter, in which the president of the company noted the proposed responsibilities of beneficiary, and asserted that each job duty satisfied the criteria of a manager, as defined in the regulations. In regards to each element of the term "managerial capacity," the petitioner provided the following: (1) the beneficiary will manage both the Sales and Marketing Department and the organizational functions of operations and customs handling; (2) as manager of the sales department, the beneficiary will supervise and control eleven independent representatives in eight states throughout the United States, and provide support in production, distribution, sales, product knowledge, and marketing; (3) upon commencement as manager, the beneficiary will have the authority to hire and fire sales representatives; and, (4) the beneficiary will exercise judgment over the day-to-day operations of the sales and operations department. As a

result, the beneficiary should be considered to be acting in a primarily managerial capacity.

On review, the record is not persuasive in establishing that the beneficiary will be functioning in a primarily managerial capacity in the United States. In examining the managerial or executive capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. 8 C.F.R. § 214.2(1)(3)(ii). The description must be sufficient to determine that the duties to be performed are primarily managerial or executive in nature. *Id.*

In the present case, the petitioner has not provided a comprehensive description of the beneficiary's job responsibilities sufficient to establish the beneficiary is employed in a managerial capacity. In response to the director's request for a more detailed description of the beneficiary's position, the petitioner submitted a broad statement claiming the beneficiary will hire and supervise future sales employees, create sales accounts, and direct the marketing and sales department. These assertions are too general to even speculate about the specific tasks the beneficiary will perform as manager of the marketing and sales department. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Further, the assertions of counsel or the petitioner 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).

On appeal, the petitioner noted that "the beneficiary will be managing a department and a function of our company," "will provide professionalism and support needed to all sales representatives and office staff," "has the authority to hire and fire," and, "is expected to exercise good judgment over the day-to-day operation of both sales and operations." Again, these statements do not provide specific information as to the beneficiary's role as a manager in the petitioning organization. Instead, they are simply assertions from the petitioner that the beneficiary will perform in a managerial capacity, and a restatement by the petitioner of the regulations. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Again, the petitioner's assertions do not constitute evidence. *Matter of Obaigbena*, supra; *Matter of Ramirez-Sanchez*, supra.

The petitioner had two opportunities to submit additional detailed documentation establishing the beneficiary's role as a manager. The director requested that the petitioner provide specific information regarding the beneficiary's proposed employment and the individuals to be supervised, including their job titles. In response, the petitioner only addressed the fact that the beneficiary would supervise future sales associates. In addition, the U.S. organizational chart provided by the petitioner simply listed "sales representatives" underneath the beneficiary's title as manager, and failed to identify the number of salespeople to be managed by the beneficiary. No further information was provided about the sales associates' job duties, educational level, or if any sales representatives were currently employed under the beneficiary. On appeal, the petitioner also mentioned that it has eleven independent representatives, yet gave no additional evidence of such. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The minimal amount of information that has been provided about the beneficiary's position in the U.S. company does not satisfy the criteria for establishing "managerial capacity." Specifically, the petitioner stated that the beneficiary will be creating sales accounts, and supervising orders. These job duties suggest that a portion of the beneficiary's time will be spent actually performing, rather than managing, the petitioner's essential functions. The petitioner has not submitted evidence to substantiate a finding that the sales associates will relieve the beneficiary from performing the non-qualifying duties of selling the petitioner's product. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Finally, the petitioner's statement that the beneficiary will mainly be supervising future sales employees further supports a finding that the beneficiary is not employed in a managerial capacity. As no information was provided about the sales representatives, the AAO cannot assume that they are professionals, as the term is defined in the Act. See § 101(a)(32) of the Act, 8 U.S.C. § 1101. The record instead supports a finding that the beneficiary will be working as a first-line supervisor to the salespeople, and will be performing many of the non-qualifying duties related to the sale and

marketing of the petitioner's product. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. *Matter of Church Scientology International, supra* at 604. In addition, the AAO is not compelled to deem the beneficiary to be a manager or an executive simply because the he possesses a managerial or executive title. Therefore, the AAO cannot conclude that the beneficiary will be employed in the United States in a primarily managerial capacity.

Beyond the decision of the director, an additional issue in this proceeding is whether the beneficiary was employed abroad for the requisite one year in a managerial or executive position. The record contains minimal documentation on the beneficiary's position in the foreign company. The petitioner asserted that the beneficiary was employed as a manager in the foreign company since October 1999, yet failed to provide a detailed description establishing such. The only job duties provided, such as hiring a sales staff and creating and maintaining sales districts, are broad generalizations that fail to provide the specific managerial duties of the beneficiary. As the appeal will be dismissed on the grounds discussed, this issue need not be further addressed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought rests 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.