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**U.S. Department of Homeland Security**

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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File: WAC 02 115 51644 Office: CALIFORNIA SERVICE CENTER Date:

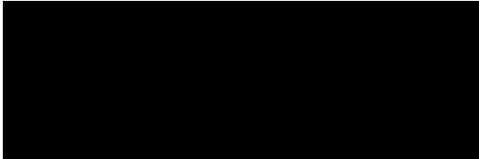
**NOV 17 2003**

ON 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)

ON BEHALF OF PETITIONER:



**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 nonimmigrant visa petition was denied by the Director, California Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is engaged in importing and selling automobile exhaust components. It seeks to continue to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel states that the director's denial is mistaken as a matter of law and must be overturned. Counsel further states that since the petitioner has no other employees, the beneficiary is performing the substantive functions of the business and is responsible for its day-to-day operation. Counsel argues that as no other employee is supervised, the executive and managerial functions of the corporation could not be performed by anyone but the beneficiary.

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 demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulations at 8 C.F.R. § 214.2(1)(3) state 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.

The petitioner is a corporation that originated in the State of California on April 28, 2000. The petitioner filed its petition on February 13, 2002. Since the petitioner had been doing business for more than one year at the time the visa petition was filed, it shall not be considered under the regulations covering the start-

up of a new business.

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.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means 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.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed

in a primarily managerial or executive capacity.

On appeal, counsel describes the beneficiary's proposed job duties in the United States as follows:

First, [REDACTED] doesn't provide a "service." It imports and sells auto parts. Therefore, [REDACTED] doesn't perform manual or skilled labor or provide a professional service. As for what he is doing, his first, one could say "primary," duty is to establish the goals and objectives of the organization, i.e. he determines what course of action the business will follow in order to show a profit, and creates the policies and procedures designed to effectuate that course of action. He has total discretion in making the decisions needed for this function since he is the President of the company and answers only to a board of directors which consists of him and his brother.

However, since the petitioner has no other employees, he is also certainly performing the substantive functions of the business, i.e. he is responsible for its day-to-day operation. Thus, he monitors the auto parts industry for trends and technological changes, in order to be sure that he is up to date on market demand and can provide the products desired. He creates a marketing strategy that includes advertising campaigns, public relations, and other publicity for the company, and writes press releases and articles for trade magazines. He then follows up on inquiries from potential customers; negotiates with them to determine the parts they want, the prices to be charged, shipping and payment schedules, and credit terms. Next, he contacts his brother in England to arrange for the necessary parts to be shipped to the United States or purchases the parts himself, deals with the shipping arrangements, customs requirements and paperwork, and freight forwarding to the customer or to a warehouse. He contacts banks and other lending institutions to negotiate loans, if necessary, sets up and maintains bank accounts for the business, and administers the company accounts and books, including debt payment. In short, he exercises discretion over the day-to-day operations of the organization. He "conducts" or "carries on" the business.

The petitioner's assertions concerning the managerial and executive nature of the beneficiary's future duties are not persuasive. An employee who primarily performs the tasks necessary to produce a product or 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). Counsel's description of the beneficiary's proposed job duties is not sufficient to warrant a finding of managerial or executive job duties. It is noted that the assertions of counsel (or a representative) 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). Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record reveals that at the time of filing the petition, the petitioner did not have any staff to relieve the beneficiary from performing non-qualifying duties. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary will be managing or directing the management of a function, department, subdivision or component of the company in the United States. The petitioner has not shown that the beneficiary will be functioning at a qualifying senior level within an organizational hierarchy.

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.

**ORDER:** The appeal is dismissed.