

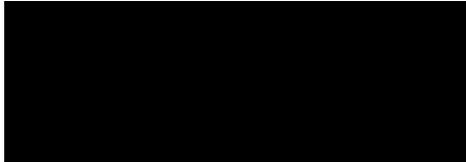
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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



FILE: WAC 02 183 50586 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



NOV 19 2003

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

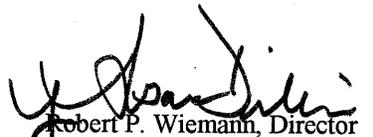
**INSTRUCTIONS:**

This is the decision 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as a wholesaler of electrical parts. It seeks to employ the beneficiary temporarily in the United States as its vice-president of sales. The director determined that the evidence was not sufficient to establish that the beneficiary would be employed primarily in a qualifying managerial or executive capacity with the U.S. entity.

On appeal, the petitioner disagrees with the director's determination and asserts that the beneficiary's duties have been and will be managerial or executive in nature.

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 regulation at 8 C.F.R. § 214.2(1)(1)(ii) states, in part:

*Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(1)(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 (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 with 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 serves in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

According to the documentary evidence contained in the record, the petitioner was incorporated in 1998 as a wholesaler of electrical parts. The petitioner states that the U.S. entity is a parent of [REDACTED] located in Seoul, South Korea. The petitioner declares three employees and \$452,414 in gross annual income. The petitioner seeks the beneficiary's services as vice-president of sales at a yearly salary of \$50,000.

At issue in this proceeding is whether the petitioner has established that the petitioner will employ the beneficiary in a primarily managerial or executive capacity.

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 petitioner submitted an organizational chart for the U.S. entity that depicts the beneficiary as vice-president of sales and marketing, with a director of business development and a general manager of logistics listed as his subordinates.

The petitioner submitted a certificate of employment, dated April 8, 2002, in which it lists the beneficiary's proposed job duties as:

He is acting as an executive officer for the sales office in Korea and is the managing director for the U.S. Sales and Marketing Department. His main activity will be to operate the Korea office from U.S. He will also be establishing new vendors here in the United States. [REDACTED] will also be temporary [sic] in charge of operating and managing the U.S. engineering department.

The petitioner also submitted a copy of the beneficiary's resume that provides a summary of the beneficiary's qualifications as:

- 7 years' sales, marketing and management experience in UMS, SAN industries;
- 10 years' sales, training, marketing, operations and management experience in PLD (Programmable Logic Devices) industry;
- Implemented strategic marketing plan;
- High performance in sales field, proven selling skill in direct and distributor channel sale;
- Intensive experiences for 13 years in various industries such as Electronics, Telecommunications and so on;
- Attended a lot of international meeting for sales conference, PA (Purchase Agreement) meeting with customers and training course; and
- Strong leadership for developing teamwork, motivating people, implementing company culture and hard work.

In response to the director's request for additional evidence the petitioner states that the beneficiary's proposed job duties are as follows:

Mr. [REDACTED] has over 15 years of sales experience and has very close relationship with many U.S. manufacturing companies. His [k]nowledge and business development skills have been well acknowledged with both U.S. and the Korea [sic] market.

Mr. [REDACTED] as Vice President of [s]ales and [m]arketing, will be in charge of [m]anaging [sic] [s]ales [o]ffice in Korea [sic] but his most important role will be to contact potential new vendors in the states [sic] and to develop the U.S. sales engineering team in order to better support our Korea [o]ffice[.] [A]nd I believe, [REDACTED] will be able to function in this role like no other because his knowledge of the U.S. and the Korea [m]arket.

The director determined that the record did not establish that the beneficiary would be employed in either a managerial or executive capacity with the U.S. entity. The director went on to explain:

The record contains insufficient evidence to demonstrate that the beneficiary will be employed, primarily, in a managerial or executive capacity. With over three million dollars in sales last year with only three employees-the owners of the business, and all managers or executives - the record indicates that a preponderance of the beneficiary's duties will be directly providing the services of the business as a salesman.

On appeal, the petitioner asserts his disagreement with the director's decision and contends that the evidence establishes that the beneficiary will be employed primarily in a managerial or executive capacity. The petitioner states that the beneficiary "will maintain his role as Vice President of [s]ales for the Korea [o]ffice." The petitioner continues by asserting that the beneficiary "will be assigned to develop new business opportunities by contact [sic] potential vendors," and that "he will also be in charge of creating new application and sales engineering team in the U.S. for the next three years." The petitioner further contends the beneficiary "will be managing [sic] general operation[s] in U.S. and Korea; and managing and creating new operation[s] in U.S." The petitioner further states that the beneficiary will be responsible for supervising and managing business development and new operations in the United States, and will be developing a sales and engineering team within the sales and marketing departments.

The petitioner's claims are not persuasive. The petitioner has not provided sufficient evidence to establish that the beneficiary will be employed primarily in a managerial or executive capacity. In evaluating the claimed managerial or executive duties of a beneficiary, Citizenship and Immigration Service (CIS) will look to the petitioner's description of the beneficiary's job duties. 8 C.F.R. § 214.2(1)(3)(ii). The information provided by the petitioner describes the beneficiary's duties only in broad and non-descriptive terms. Duties described as being responsible for contacting potential new vendors in the United States, developing a U.S. sales engineering team, and managing and creating new operations in the United States and maintaining current operations are without any context in which to reach a determination as to whether they would be qualifying as managerial or executive in nature. There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Without clarification, the beneficiary's proposed job duties such as establishing new vendors, and developing, operating and managing the U.S. sales, marketing and engineering department cannot be construed as being managerial or executive in nature.

Further, based upon documentary evidence, the beneficiary's proposed job duties are not sufficient to establish that he will be employed in an executive capacity. Neither does the evidence of record demonstrate that the U.S. entity is in a position to sustain a managerial or executive position. Moreover, the petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that he will be directing the management of the organization or a major component or function of the organization, that he will be establishing goals and policies, or that he will be exercising wide latitude in discretionary decision-making.

Absent details concerning the beneficiary's and his subordinates' daily activities and percentage of time to be spent performing each duty, the record is insufficient to establish that the beneficiary will be managing rather than supervising subordinate employees. The petitioner claims that the beneficiary will be the vice-president of sales of the U.S. entity. However, rather than managing a major department, subdivision, function, or component of the organization, it appears that he will primarily be performing the services of the business. The record reflects that the beneficiary will primarily be engaged in the marketing and sale of the petitioner's product or services. As case law confirms, an employee who

primarily performs the tasks necessary to produce a product or to provide a service 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). It must be shown that the managerial or executive employee has authority over day-to-day operations beyond the level normally vested in a first-line supervisor. *Id.*

Furthermore, the petitioner's evidence is not sufficient in establishing that the beneficiary will be managing a subordinate staff who will relieve him from performing non-qualifying duties. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title. It appears that the beneficiary will, at best, be employed as a supervisor of the sales and marketing department. Supervisors who plan, schedule and supervise the day-to-day work of non-professional employees are not employed in a managerial or executive capacity. Both the Act and CIS regulations state that a first-line supervisor is not considered to be acting in a managerial or executive 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.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary will be employed in a primarily managerial or executive capacity. The record does not establish that a majority of the beneficiary's duties will be directing the management of the organization. The record indicates that a preponderance of the beneficiary's duties will be directly performing the operations of the organization, that is, sales and marketing. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel who would relieve him from performing non-qualifying duties. Neither does the evidence establish that the beneficiary will be employed primarily in an executive capacity; directing the management of the organization, establishing goals and policies, exercising wide latitude in decision making, or receiving limited supervision or direction from higher level officials. CIS is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title. Accordingly, the appeal will be dismissed.

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; *Republic of Transkei v.*

*INS*, 923 F.2d 175,178 (D.C. Cir. 1991) (holding burden is on the petitioner to provide documentation); *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F.Supp.2d 22, 24 (D.D.C. 1999) (requiring the petitioner to provide adequate documentation). The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.