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

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**Identifying information is redacted to prevent clearly unwarranted invasion of personal privacy**

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

[Redacted]

FILE: EAC 00 272 52095 - Office: VERMONT SERVICE CENTER Date: NOV 20 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 nonimmigrant visa petition was denied by the Director, Vermont 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 and dealer business, specializing in software and computer parts. It seeks to employ the beneficiary temporarily in the United States as the vice president of its new office for three years. The director determined that the evidence was not sufficient to establish that the beneficiary has been or would be employed primarily in a qualifying managerial or executive capacity or that the petitioner would be able to support a managerial or executive position within one year of operation.

On appeal, counsel 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.

The regulation at 8 C.F.R. § 214.2(1)(3)(v) states that, if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in

paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

According to the documentary evidence contained in the record, the petitioner was incorporated in 2000 as a wholesaler dealer business, whose principal activity is the sale of software and computer parts. The petitioner states that the U.S. entity is a subsidiary of The Resources, India. The petitioner declares one employee. The petitioner seeks the beneficiary's services in order to open a new office and render services as vice president for a period of three years, at a yearly salary of \$31,200.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed 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.

In the petition, the petitioner described the beneficiary's job responsibilities for the foreign entity as managing partner as follows:

[The beneficiary] as Managing Partner of the Resources, conducts the business of the company in a managerial

position with full charge of general administration, finance, marketing, sales, purchase, and business development.

[The beneficiary] controls administration, finance, government related matters, contracts, and is in charge of personnel and other related activities of the business, to conduct the same in an orderly manner and to ensure smooth and efficient operations overall. He oversees the functions related to accounting and taxation.

[The beneficiary] directs the marketing policy of the company. He maintains a continuous watch on economic and political situations, economic trends overseas, survey[s] the market, assess[es] the requirements of potential customers, inter-acts with government and semi-government departments, corporations, and others. He obtains and offers commitments for the products of the company and accordingly conclude [sic] the dealings.

[The beneficiary] is responsible for the purchase. He procures materials and suppliers and services required by the company on suitable lease &/or [sic] purchase.

He directs activities to increase the sales of the company. He meets the potential customers, maintains liaison with the officials of government and semi-government departments, other corporations and large consumers of the company's products. The aim and purpose of this is to secure progressively increasing development of business and thereby, the net revenue of the company. He deals with & decides day to day operations of the company.

[The beneficiary] is assisted by staff in due performance of his duties for the company. [The beneficiary] has the authority to hire & fire the staff. The staff reports to [the beneficiary]. [The beneficiary] reports directly to the Board of Partners.

The petitioner continues by describing the beneficiary's proposed duties as vice president for the U.S. entity as follows:

Corporate Planning: The beneficiary analyzes the company's past performance, evaluates the strengths and weaknesses of the company and in light thereof,

forecasts and plans the business activity of the company, laying down the path of progress for the company's future. His responsibilities include making recommendations to management with regard to economic objectives and policies for the company.

General Administration: [The beneficiary] directs the overall business activities of the organization to conduct the same in an orderly manner ensuring due compliance with statutory requirements and to achieve smooth and efficient operations overall.

Finance: [The beneficiary] looks after the available funds at the disposal of the company, budgets the same for various requirements of the company, including purchase of products, expenses for administration, taxes, etc. He will arrange to borrow funds from banking institutions and also private investors for development of the business, as may be required, on suitable terms. He plans the operations of the company to ensure that the cash in and cash out process is carried on to ensure smooth operations of the company.

Marketing-Sales: The beneficiary directs the marketing policy of the company. He surveys the market, assesses the requirements of the buyers, evaluates the market potential at various geographical locations as also within specific buyer groups. With this he develops marketing strategy and organizes for effective sales of the company's products. In order to achieve this goal, he resorts to advertising and promotional activities so as to promote sales of the products of the company and attract potential buyers. This activity is undertaken as may be required and justified by business prudence. He prices the products geared to not only attract the potential buyers, but also to retain a regular clientele for the products of the company.

Business Development: [The beneficiary] is responsible for business development, including market research, promotion of business and sales, which will account for 100% incoming revenue of the company. As such he will look for new business opportunities, new products. The aim and purposes for this is to secure progressively increasing development of business and thereby, the net revenues of the company.

Purchases: The incumbant [sic] is responsible for the purchase of the goods, materials and supplies required by the company. He compares catalogue listings, examines samples, attends demonstrations of products and conventions, calls for quotations, negotiates prices and contract terms, evaluates alternative offers, and makes a choice between suppliers.

[The beneficiary], on assuming the charge as Vice-President of MAS Computers Inc., will initially commence operations with one employee to attend to secretarial functions and to assist him in administrative and other areas of operations for due performance of his job functions. He has full authority to hire and fire staff. The staff will report to [the beneficiary]. [The beneficiary] reports directly to the President of the company.

The petitioner submitted an organizational chart for The Resources, India that depicts the beneficiary as managing partner of the general administration, marketing/sales, and business development departments. The chart also illustrates a staff member for the general administration division only.

In response to the director's request for additional evidence, counsel stated that the beneficiary is charged with the responsibility to oversee the overall operations of the company. Counsel also maintained that the beneficiary manages essential functions within the organization, namely marketing and finance. Counsel further provided elaborate descriptions of duties performed by the beneficiary as managing partner of the foreign entity.

The director determined that the record did not establish that the beneficiary had been or would be employed in either a managerial or executive capacity.

On appeal, counsel asserts his disagreement with the director's decision. Counsel proceeds by reiterating the beneficiary's job functions noted in the initial petition and provides explanations and clarifications. He further argues that the beneficiary is charged with the responsibility to oversee the overall operations of the company. Counsel also maintains that the beneficiary manages essential functions within the foreign organization, namely marketing and finance. On appeal, counsel also submits an organization chart of the U.S. entity that

depicts the beneficiary as managing partner with one staff assistant as his subordinate.

While the petitioner has presented additional clarifications and explanations, the record does not support a finding that the beneficiary has been employed in a managerial or executive position with the foreign entity. There is no evidence to show that the beneficiary manages a function of the organization or the day-to-day activities of the company. In the instant case, the petitioner has not demonstrated that the beneficiary manages or directs the management of a department, subdivision, function, or component of the organization. To the contrary, although the petitioner states that the beneficiary is in control of administration, purchasing, marketing/sales, and business development, an organizational chart of the foreign entity shows that another managing partner has direct authority over finance and purchasing. In addition, the petitioner has stated that the beneficiary performs his duties with the assistance of independent professionals and contractors, who he supervises; however, there has been no evidence produced to substantiate that claim. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). A manager or executive may manage or direct the management of a function of an organization. However, it must be clearly demonstrated that the manager or executive does not directly perform the function.

The petitioner has not established that the beneficiary has managed a subordinate staff of professional, managerial or supervisory personnel who relieve him from performing the services of the corporation. In the instant matter, the evidence shows that there is no subordinate staff for the beneficiary to manage or supervise, other than a fourth managing partner. In addition, evidence on record establishes that a substantial percentage of the foreign entity's work assignments have been out-sourced. There is insufficient evidence to show that the beneficiary has exercised significant control over the manner in which outside independent contractors perform services for the foreign entity. The evidence of record does not demonstrate that the beneficiary's job duties abroad have involved anything other than performing the day-to-day functions and operational activities of the company. Although the petitioner initially indicated that the foreign entity was engaged in business involving computer software, computer parts, and equipment, the record, as presented, demonstrates that the foreign entity is engaged in desktop publishing, graphic design, and printing. The evidence also establishes that these functions have been outsourced to Multiplier, an independent

printing service, since 1997. There has been no evidence presented by the petitioner that shows that Multiplier's employees are in any way subject to the management or supervision of the beneficiary.

Furthermore, the evidence submitted fails to establish that the beneficiary will be employed in a managerial or executive capacity for the U.S. entity. The beneficiary's job duties as vice-president of the U.S. entity, such as: corporate planning, directing overall business activities, controlling company finances, directing the marketing policy of the company, business development, and purchase of goods, mirror the beneficiary's job descriptions abroad. Furthermore, the job descriptions given are vague and fail to provide detailed information regarding how the beneficiary is to carryout the duties specific to the U.S. position. In the instant matter, there is no evidence to show the percentage of time to be spent by the beneficiary performing managerial versus non-managerial duties for the U.S. entity. See *Ikea US, Inc. v. US Dept of Justice, INS*, 48 F.Supp.2nd 22, 24-5 (D.D.C. 1999) (requiring the petitioner to provide adequate documentation). Further, there has been no evidence produced to establish that the entity will be able to support a managerial or executive position within one year of operation.

The petitioner claims that the beneficiary will be manager of operations for the organization. However, rather than managing a major department, subdivision, function, or component of the organization, it appears that he will actually be performing the services of the business. 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). The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title.

The assertions of counsel without documentary evidence cannot be used to establish that the beneficiary is acting and will be acting in a primarily managerial or executive capacity. 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). 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, supra*.

On review of the complete record, it cannot be found that the beneficiary has been or will be employed in a managerial or executive capacity. Therefore, 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 v. U.S. Dept. of Justice*, 48 F.Supp.2nd 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.