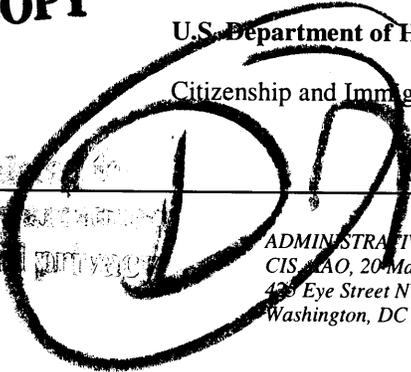


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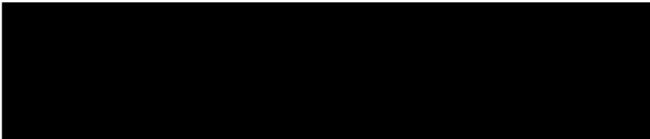
U.S. Department of Homeland Security

Citizenship and Immigration Services

Identifying data deleted
Personal identity information
Invasion of personal privacy



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



OCT 02 2003

FILE: WAC 01 295 50709 Office: CALIFORNIA SERVICE CENTER Date:

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], states that it is the parent of a Philippine business [REDACTED]. The petitioner states that it designs, manufactures, and sells trophies, plaques, medals, and pins. The U.S. entity was incorporated on August 10, 1989 in the State of California. The petitioner now seeks to hire the beneficiary as a new employee. Consequently, in September 1999, the U.S. entity filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee (L-1) for three years. The petitioner seeks to employ the beneficiary as the U.S. entity's marketing manager at an annual salary of \$36,000. On February 25, 2002, the director determined, however, that the beneficiary did not qualify as a manager. Consequently, the director denied the petition. On appeal, petitioner's counsel asserts that the beneficiary is a manager because she manages an essential function.

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 serves 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 will carry out executive duties; instead, the petitioner claims only that the beneficiary will be primarily performing 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 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). The petitioner's Form I-129 described the beneficiary's proposed duties as:

[P]reparation for company meetings and correspondence with member representatives and customers. Responsible for research and develop [sic] company strategy in the area of public relations and marketing company's products such as design, manufacture and engraving of plaques, trophies, medals[,] pins, other promotional products, etc.

In addition, the petitioner attached a September 12, 2001 letter to the Form I-129. The letter elaborated further upon the beneficiary's proposed duties:

[The beneficiary] will be responsible for research and developing [sic] company strategy in the area of public relations, and marketing [the petitioner's] products such as design, manufacture and engraving of plaques, trophies, medals, pins and other promotional products. She will also be providing pre-sales meetings and correspondence with member representative[s] and customers to ensure customer satisfaction. She will also be providing consultative assistance, assisting sales in fostering new relationships, maintaining consistent contact with present customers.

On November 7, 2001, the director issued a request for evidence. In particular, the request for evidence instructed the petitioner to "provide a more detailed description of the beneficiary's specific job duties, including the percentage of time to be spent on each duty." In response, the petitioner supplied the following description:

1. Develop, implement, and manage the company's advertising goals.
2. Two (2) hours each day . . . for . . . telephone promotion. Specifically[,] to follow-up on received telephone calls from potential customers and call potential markets which indicated interest [in] the [petitioner's] products.
3. Remaining [s]ix (6) hours to coordinate special promotional events:
 - a. With assistance from [production manager]¹ [redacted] to coordinate marketing activities of a product or business line which may include advertising, direct mailing, printing, customer events and trade shows.
 - b. With assistance from [director, corporate secretary] [redacted] and [general manager and computer designer] [redacted] to develop and implement a Strategic Marketing Plan for the organization and the development of [the petitioner's] marketing objective, establish sales and quotas, manage budgets and evaluate sales performance. Manage and develop marketing programs and materials such as advertising, event support and on line promotions.
 - c. With assistance from [vice president, treasurer/owner] [redacted] to be responsible for negotiating, scheduling and buying appropriate media.
4. A reasonable estimate of time to be spent on the above duties will be:
 - a. 20% to be set aside on interviewing clients, and recording interview information for all complains [sic] and suggestions regarding [the

¹ The job titles in this description are depicted on the year 2002 organizational chart that the petitioner submitted in response to the request for evidence.

petitioner's] products and services for the development of [the petitioner's] company.

- b. 80% to target potential advertising and developing relationships in order to acquire new accounts especially at the Supplies Department of the Military such as the U.S. Navy, the Marines, the Air Force and the Army in the San Diego area.

The beneficiary's proposed duties primarily appear to comprise marketing tasks. For example, the beneficiary will be (1) managing the petitioner's advertising goals; (2) spending two hours per day promoting the petitioner by telephone; (3) allocating 80 percent of her time to targeting potential clients, especially military entities in the San Diego area; and (4) working six hours per day coordinating special promotional events. Coordinating special events will include advertising, direct mailings, trade shows, and setting quotas. The remainder of the petitioner's time - 20 percent - will be spent addressing current clients' complaints and suggestions. Marketing duties, by definition, qualify as performing a task necessary to provide a service or produce a product. 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). In sum, essentially all of the beneficiary's proposed responsibilities will involve producing a product or providing a service; therefore, the beneficiary's proposed duties do not qualify as managerial.

On appeal, counsel claims that, because the beneficiary will manage an essential function, she will perform primarily managerial duties. However, counsel admits that the claimed essential function will comprise establishing the petitioner's advertising goals as well as conducting promotional and public relations contacts with clients. As explained above, these proposed duties demonstrate that, at most, the beneficiary will perform tasks necessary to provide a service or produce a product. *Matter of Church Scientology International, supra*. Consequently, the beneficiary does not qualify as a functional manager.

Additionally, on appeal, counsel contends that the beneficiary qualifies as a manager because she will supervise or control the work of three other employees, namely [REDACTED]

██████████ and ██████████ Counsel's assertions do not constitute evidence, however. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The job descriptions submitted in response to the request for evidence depicted the three employees as helping rather than relieving the beneficiary of her nonqualifying duties. Therefore, at most, the beneficiary will function as a first line supervisor. In sum, the beneficiary does not qualify as a manager.

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*, 923 F.2d 175, 178 (D.C. Cir. 1991) (holding burden is on the petitioner to provide documentation); *Ikea US, Inc. v. INS*, 48 F.Supp. 2d 22, at 24-5 (requiring the petitioner to provide adequate documentation). The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.