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Department of Homeland Security
Citizenship and immigration Services

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

File: WAC-02-107-50088 Office: California Service Center Date: **SEP 15 2003**

IN 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)

PUBLIC COPY

IN 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 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 nonimmigrant visa petition was denied by the Director, California Service Center. The matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a developer and distributor of electronic automation systems. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its branch manager. The director determined that the petitioner had not established that the beneficiary had been and would be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel asserts that the Bureau failed to ask the petitioner to submit additional evidence of the beneficiary's managerial/executive duties. Counsel states that he is submitting a comprehensive description of the beneficiary's duties. Counsel states that the petitioner has three employees.

Regulations at 8 C.F.R. § 214.2(l)(14)(ii) state that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The petitioner was established in 1999 and states that it is a branch of I.T. System Company, located in Kyounggi-Do, Korea. The petitioner claims two (2) employees and seeks to extend the employment of the beneficiary as branch manager for a two-year period at an annual salary of \$40,000.

The issue to be addressed in this proceeding is whether 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:

"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:

"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 a letter dated February 4, 2002, the beneficiary described his duties, in pertinent part, as follows:

In his position as Manager, [the beneficiary] provides a senior level of guidance and direction with regard to the successful implementation of our company's international development program in the U.S. and Mexico. Despite numerous challenges, [the beneficiary] has worked diligently and persistently to establish a committed network of manufacturing customers for PRS (the petitioner). But an economic turndown, and stiff competition for a strategic and advantageous position within the U.S. manufacturing sector has been strong, and PRS has had difficulty building a stable business foundation.

[The beneficiary] has worked tirelessly to develop the client relationships necessary to provide the security of a stable distribution network. He networks constantly in order to promote PRS' corporate image within the market and he endeavors to show that PRS can provide the highest quality factory automation products and printing materials with the fastest turn-around at the lowest cost.

Accordingly, it is crucial to retain [the beneficiary's] services at this time. His major responsibilities will continue to be formulating and directing market policies and strategies for the U.S. market, hiring and training local sales representatives, negotiating and executing local business contracts, and continuing to network within the U.S. manufacturing sector.

The petitioner submitted an organizational chart indicating that the beneficiary reported directly to the president of the United States entity. The chart indicated that the beneficiary had no subordinate positions reporting to him. The organizational chart further indicated that the U.S. company had a quality control manager, whose position paralleled the beneficiary's position and reported directly to the president of the U.S. company.

On appeal, counsel states that he is submitting a comprehensive description of the beneficiary's job duties. Counsel states, in pertinent part, the following:

[The beneficiary's] major responsibilities have been to formulate and direct marketing strategies and policies for the U.S. market, negotiate and execute regional business contracts, and network within the U.S. manufacturing sectors in need of our automated manufacturing products. [The beneficiary] regularly reviews current marketing policies and procedures and develops appropriate plans necessary to ensure consistency and efficiency in manufacturing and development in accordance with parent company policies. [The beneficiary] has been granted broad decision-making discretion with regard to hiring and all personnel matters. He has executed complete decision-making discretion over the day-to-day operations of the U.S. office.

[The beneficiary] has executed the following job duties:

- . Direct complex market analysis;
- . Formulate financial programs to secure funding and direct others in the execution of such task;
- . Network within the industry to promote the company's image and develop investor relations;
- . Direct and evaluate business progress and review stated corporate goals;
- . Negotiate real estate leases and purchases for business expansion;
- . Evaluate company productivity and profitability;
- . Allocate funds to necessary resources;
- . Create budgets and manage employees to ensure that expenditures remain within stated limits;
- . Determine costs;
- . Oversee statistical analysis regarding business growth and development;
- . Review new business proposals and investments; and,
- . Negotiate joint venture contracts.

Counsel asserts that the beneficiary qualifies as a manager/executive. However, counsel's assertion is not supported by the record. While counsel states that the beneficiary is responsible for managing employees and alludes to the beneficiary's overseeing a subordinate staff, the record reflects that the beneficiary has no subordinate employees. Therefore, the record does not demonstrate that the majority of the operational duties performed by the beneficiary are managerial or executive in nature. Rather, it appears that the beneficiary would by necessity perform the operational duties of the U.S. organization.

Counsel avers that the Bureau had previously approved an L-1 petition for this beneficiary and therefore should approve this extension. However, if the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute clear and gross error on the part of the Bureau. The Bureau is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive position. The petitioner has not provided a comprehensive description of the beneficiary's purported duties that reflects the directing of a subordinate staff of managers or professional employees. Even though counsel asserts that the beneficiary's duties are managerial and executive in nature, the record lacks sufficient evidence to support counsel's contentions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record does not establish that a majority of the beneficiary's duties have been or will be primarily directing the management of the organization. The record indicates that a preponderance of the beneficiary's duties have been and will be directly involved in the sale of electronic systems. The petitioner has not demonstrated that it has reached or will reach a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis. Nor does the record demonstrate that the beneficiary primarily manages an essential function of the organization or that he operates at a senior level within the organizational hierarchy. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

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.