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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: WAC 01 244 60618 Office: CALIFORNIA SERVICE CENTER Date: APR 21 2004

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:

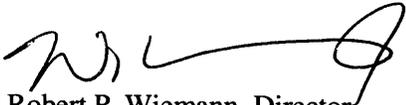


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INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is in the business of international trade and investment. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary has been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel refutes the director's findings and submits additional documentation to overcome the denial.

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.

Pursuant to 8 C.F.R. § 214.2(l)(14)(ii) 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 U.S. petitioner states that it was established in May of 2000 and that it is a subsidiary of Shachem Trading Co., Ltd., located in China. The petitioner seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of \$36,000.

At issue in this proceeding is whether the petitioner established that the beneficiary has been and will be employed in a managerial or executive capacity.

Section 101(a)(44)(A) of the Immigration and Nationality Act ("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 support of the petition, the petitioner provided the following list of the beneficiary's job duties:

1. Set up business objectives and formulate policies;
2. Make up long-term and short-term business plans;
3. Direct the preparation of budget scheme to guarantee the accomplishment of the business objectives;
4. Evaluate and supervise the performance of General Manager;

5. Review business reports and financial statements;
6. Direct market research;
7. Assist General Manager with the recruitment of employees;
8. Participate [in] major business negotiations with manufactures [sic] and trading companies;
9. Report to the Chinese parent company about the current status and the plan of the US entity at regular intervals.

On August 9, 2001, CIS requested additional evidence to establish that the beneficiary has been and will be employed in a managerial or executive capacity. The petitioner was instructed to provide a copy of its organizational chart listing all employees that are under the beneficiary's supervision by name and job title, as well as their brief job descriptions, educational levels, salaries, and immigration statuses. The petitioner was also asked to submit a more detailed description of the beneficiary's job duties in the United States, including the percentage of time the beneficiary spends performing each of her listed duties.

The petitioner's response included the following additional job description for the beneficiary:

The beneficiary has been working as President of the petitioning company. In that position, she plans, develops and establishes policies and objectives of the company's business in international trade and import and export. She reviews activity reports and financial statement [sic] to determine progress and status in attaining objectives. She hires executives and managers to operate the daily business of the company, and evaluates their performances for compliance with established policies and objectives of the company. Her job responsibilities also include business planning, dealing with attorneys, accountants and other professionals providing necessary services to the company; securing bank and other financial services, negotiating leases and contracts, establishing relations with customers and public in general, developing marketing strategies, analyzing business reports. These activities clearly shows [sic] that the beneficiary has exercised discretion over the day-to-day operations of the company and has been working in managerial capacity.

Although the petitioner also provided an organizational chart and a separate list of its employees and their job titles, it failed to provide brief job descriptions for anyone but the beneficiary. The petitioner also failed to provide the employees' educational levels and legal statuses as requested.

The director denied the petition noting that the petitioner is not sufficiently staffed to support an executive or managerial position and determined that the petitioner lacks employees to carry out the non-qualifying work. The director also noted the petitioner's failure to provide the legal status of its employees, aside from the beneficiary.

On appeal counsel provides photocopies of the work authorization and permanent resident cards for its employees to establish their respective legal statuses. Counsel also asserts that the beneficiary is employed in a qualifying managerial capacity, which includes managing other managers and executives. While the

organizational chart submitted in response to the request for additional evidence shows that several of the beneficiary's subordinates have managerial or executive titles, the petitioner failed to provide brief descriptions of any of their jobs. The fact that these employees have managerial or executive titles does not necessarily mean that they perform executive or managerial tasks. Simply 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).

Counsel further states that because the beneficiary is at the top of the petitioner's small company hierarchy she is the most senior employee and therefore qualifies as a manager or executive. However, the fact that an individual manages a small business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. That determination can be made only by examining the beneficiary's duties and the duties of her subordinates. In the instant case, the petitioner's failure to provide job descriptions for any of the beneficiary's subordinates makes it virtually impossible for the AAO to confirm counsel's argument that the beneficiary's subordinates relieve her from having to perform tasks that are necessary to produce a product or provide a service. This is so particularly in light of the petitioner's claim that the beneficiary's duties include marketing, customer service, and public relations, none of which can be deemed as either managerial or executive. An employee who primarily performs the tasks necessary to produce a product or to 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 also cites prior AAO cases to support the point that beneficiaries have been approved in cases where the petitioner is a one-man operation. However, the cases cited by counsel are unpublished. Pursuant to 8 C.F.R. § 103.3(c) CIS employees are only bound by AAO precedent decisions. Unpublished decisions, such as the ones cited by counsel, are not similarly binding. Regardless of how much authority and discretion the beneficiary has in the instant case, the petitioner still has the burden of showing that the beneficiary's duties are primarily managerial or executive. In the instant case 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 capacity. The description of the beneficiary's duties that the petitioner has provided is too vague to relay to the AAO an understanding of what exactly the beneficiary does on a daily basis. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel, or that the beneficiary will be relieved of having to perform non-qualifying duties. 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.