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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: WAC 01 294 55151 Office: CALIFORNIA SERVICE CENTER Date: **APR 26 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:

[Redacted]

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**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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.

*[Handwritten signature]*  
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 petitioner is described as an international import and export business. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its manager. The director determined that the petitioner had not submitted sufficient evidence to demonstrate that the beneficiary had been or would be employed primarily in a managerial or executive capacity.

On appeal, counsel disagrees with the director's determination and asserts that the beneficiary's duties have been and will be primarily 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(l)(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(l)(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(l)(14)(ii) states 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 (1)(1)(ii)(G) of this section;
- B) Evidence that the United States entity has been doing business as defined in paragraph (1)(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.

According to the documentary evidence contained in the record, the petitioner was incorporated in 2000 as an import and export business. The petitioner states that the U.S. entity is a subsidiary of Sun Jae Tong Sang Corp., located in Seoul, Korea. The petitioner declares four employees and over one million dollars in gross annual income. The petitioner seeks to extend the beneficiary's services as a manager for a period of three years, at a yearly salary of \$25,000.

The issue to be addressed 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 describes the beneficiary's past job duties as "manage, direct and supervise the operation of the department of trade and development." The beneficiary's proposed job duties are described as "manage, direct and supervise the operation of the policy of the U.S. subsidiary."

In a letter of support dated September 18, 2001, the president of S.N.S. Trading describes the beneficiary's job duties as directing the business operation of the company, reviewing activity reports and financial statements, and preparing and delivering reports to the chairman of the board.

In response to the director's request for additional evidence, the petitioner listed the beneficiary's job duties to include:

- Direct operation between and the United States [sic]. Direct and coordinate Activities of operations trade department.:30%
- Act as between Employer and Korean customers to expedite flow of trade.:10%
- Check and supervise documentation process and trade declaration for Korea & U.S. customs.:15%
- Quote and apply tariff rate to bill of lading and check bill of lading to final booking status report and assign bill number.:30%

- Control flow of moving cargo and packing. Review documentation and work product employees [sic].:15%

The petitioner lists two employees under the beneficiary's supervision: (1) manager of export division and domestic department, college graduate, and (2) secretary, high school graduate. A position description for the manager includes: "coordinate activities of Export dept. and check documentation process for U.S. Korea customs. Corporate [sic] with [the beneficiary] who is in charge of Inbound & Transportation department. A position description for the secretary includes:" type, write bills, statements, receipts and documentation Process. Also other clerical work [sic]." The petitioner goes on to state that the beneficiary also has delivery and warehousemen and additional part-time workers under his authority. A position description for the deliverymen includes: "all merchandise on goods to delivery at [sic] our customers," and a position description for the independent salesmen includes: "sales our [sic] merchandise and goods." Although the petitioner lists additional warehousemen, deliverymen, independent salesmen, and other part-time workers, the evidence of record fails to substantiate their existence within the U.S. entity's organization. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The director determined that the record contained insufficient evidence to demonstrate that the beneficiary will be employed, primarily, in a managerial or executive capacity. The director further maintained that the evidence established that the beneficiary primarily performed tasks necessary to produce the product(s) or provide the service(s) of the organization. The director concluded by stating that at best, the evidence establishes that the beneficiary is a supervisor of two subordinates.

On appeal, counsel asserts its disagreement with the director's decision, and submits a brief and evidence in support of its assertion. Counsel contends the beneficiary is more than a mere supervisor, but rather is a manger for the U.S. entity. Counsel reiterates the job duties described in the petitioner's response to the director's request for additional evidence, and resubmits the letter and organizational chart for the U.S. entity.

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 capacity. When examining the executive or 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(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

On review, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include directing and coordinating activities, serving as a "go between" for the U.S. company and customers, checks and supervises the documentation process, and controls the distribution of company products. The petitioner did not, however, define these phrases or provide any

specifics as to what these duties entail. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The record does not establish that the beneficiary has been or will be primarily managing the organization, or a department, subdivision, function, or component of the organization. The record indicates that a preponderance of the beneficiary's duties have been and will be directly providing the services of the organization and supervising two non-professional employees. 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). The petitioner has not demonstrated that the beneficiary has been or will be functioning at a senior level within an organizational hierarchy. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing non-qualifying duties. Accordingly, the petitioner has failed to demonstrate that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that a qualifying relationship exists between itself and the claimed foreign parent company. The petitioner asserts that a Korean company, Sun Jae Tong Sang, Corp. Ltd, wholly owns the U.S. company. To this end, the petitioner submitted a stock certificate and ledger indicating the Korean company owns 1,000 shares. However, upon review, the petitioner's IRS Form 1120, United States Corporate Tax Return indicates at Schedule E, that In S. Eun owns 100 percent of the U.S. company. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). For this additional reason, the petition will be denied.

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.