

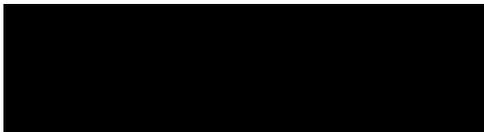
U.S. Department of Homeland Security  
Citizenship and Immigration Services

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



**FEB 03 2004**

FILE: WAC 03 006 53560 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]

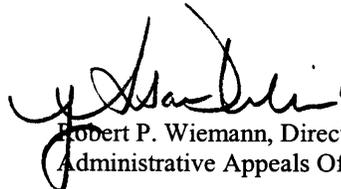
**INSTRUCTIONS:**

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 nonimmigrant visa petition was denied by the Director, California 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 travel agency. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its general manager. The director determined that the petitioner had not submitted sufficient evidence to demonstrate that the beneficiary has been or would continue to 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 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)(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.

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.

According to the documentary evidence contained in the record, the petitioner was incorporated in 1993 as a travel agency. The petitioner states that the U.S. entity is a wholly-owned subsidiary of Asia Pacific Chartering Phil., Inc., located in the Philippines. The petitioner declares four employees. The petitioner seeks the continuation of the beneficiary's services as its general manager for three years, at a monthly salary of \$3,000.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary has been and will continue to 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.

Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101 (a)(44)(C), provides:

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization component, or function in light of the overall purpose and stage of development of the organization, component or function. An individual shall not be considered to be acting in a managerial or executive capacity (as

previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

The petitioner provided a position description for the beneficiary as general manager of the travel agency as follows:

1. Directs and coordinates activities of Guam subsidiary organization to obtain optimum efficiency and economy of operations and maximize profits.
2. Responsible for proper and efficient liaison activity with Manila sister affiliate to ensure efficient operations and service compliance.
3. Makes discretionary long range [sic][.] Hires and discharges subordinate personnel and directs staffing patterns.
4. Plans and develops organization policies and goals, and implements goals through subordinate administrative personnel.
5. Coordinates activities of divisions or departments to affect operational efficiency and economy.
6. Directs and coordinates promotion of travel services performed to develop new markets.
7. Increase[s] share of market, and obtain competitive position in industry.
8. Analyzes division or department budget requests to identify areas in which reductions can be made, and allocates operating budget.
9. Confers with staff personnel, and reviews activity, operating and sales reports to determine changes in programs or operations required.
10. Directs preparation of directives to division or department administrator outlining policy, program, or operations changes to be implemented.
11. Promotes organization in travel industry and trade associations.

The petitioner also submitted a copy of the beneficiary's resume, which lists her job duties as follows:

Handles the Following:

- Passenger Flight Reservations and Plane Ticket issuances (Manual and Automated) [.]
- Outbound Package Tour arrangements, itinerary proposals and coordination with Bangkok Head Office.

- Group Travel Arrangements (proposals, reservations and ticket issuance, special requests, airport meet and assist services) [.]
- Travel arrangements for VIP passengers.
- Airfare computation/Quotations (Through computer fare quote system and manual computation) [.]
- Operational Problems (passenger/agents' complains, irregular transactions, technical problems-computer systems breakdown) [.]
- Staff Training (Manila and Satellite Offices) [.]
- Conducts Product Presentation/Updates and Ticket Issuance Trainings to Travel Agents.
- Conducts weekly staff meeting for updates on operational procedures and problems encountered/solved during the week.
- Counter checks the Daily Sales Reports submitted by Manila and Satellite Offices.
- Satellite Offices Cut-over for Operations-proper coordination for computers/printers installation and system configuration.
- Acts as OIC in the absence of immediate superior.
- Reports to immediate superior on developments of Office Activities-Problems encountered and solutions applied, trainings and does monthly production reports.
- Counter checks the reports to be submitted by staff for possible correction on figures and format.
- Coordination with other International Stations for irregular inquiries and requests.
- Inventory and requests for counter supplies/promotional materials with Head Office.

An organizational chart for the U.S. entity depicts the beneficiary as general manager with an accountant and two reservation agents listed as her subordinates.

The petitioner lists the reservation agents' job duties as:

- Creates flight reservations.
- Arranges Hotel/Car reservations.
- Issues plane tickets.
- Arranges inbound/outbound tour packages.
- Does the daily/monthly sales reports.
- Does the refund processing for Thai Airways transactions.

- Checks issuance for accounts payables.
- Handles group travel arrangements.
- Checks the ISP weekly report/remittance.
- Prepares the daily collection report.
- Prepares weekly statement of accounts to clients.
- Weekly follow-up on accounts receivables.
- Reconciles tickets for ISP reports and prepare bar adjustments for any discrepancies.
- Weekly submission of pertinent accounting documents/reports to Manila head office.
- Does the airline refund processing and follow-ups.
- Does the gross receipt tax summary.

In response to the director's request for additional evidence pertaining to the beneficiary's qualification as a manager or executive, the president of the U.S. entity writes:

[The beneficiary] now has two employees under her direct supervision. Although this is the case, Ms. Megino's responsibilities have actually increased and she remains in-charge of our entire operations.

[The beneficiary] is directly involved in managing all operations of Pactours, Inc. Travel Agency and Passenger Sales Agent for Thai Airways Int'l in Guam. These responsibilities are highly technical and need to deal with sensitive negotiations and protocol within the airline industry.

The director denied the petition stating that upon review, the evidence as provided was deficient in demonstrating that the beneficiary would be employed in a primarily managerial or executive capacity. The director went on to state that the job description for the beneficiary indicates the beneficiary will be performing the day-to-day duties of the entity, rather than managing or directing an organization.

On appeal, counsel disagrees with the director's decision and asserts that the documentation previously submitted supports a determination that the beneficiary's position is managerial or executive in nature. Counsel contends that the director placed undo weight upon the fact that the petitioner had but four employees. He goes on to state that the number of employees supervised is not determinative of either managerial or executive capacity. He concludes by asserting that the petition clearly shows that the beneficiary serves in both executive and managerial capacities.

On review, counsel's contentions are not persuasive. 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*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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.

Further, while company size cannot be the sole basis for denying a petition, that element can nevertheless be considered, particularly in light of other pertinent factors such as the nature of the petitioner's business. Taken together, all factors can be used as indicators that help determine whether a beneficiary can remain primarily focused on managerial or executive duties or whether that person is needed, in large part, to assist in the company's day-to-day operations. In the instant matter, the latter more accurately describes the beneficiary's role. The record demonstrates that the majority of the beneficiary's job duties overlap with those of her subordinate staff. The record shows that the petitioner is a travel agency. The record also demonstrates that the company was established in 1993 and only employs the beneficiary and three other employees.

Although counsel contends that the beneficiary manages two of the three employees, there has been no documentary evidence submitted detailing to what extent she manages them. The petitioner has provided no comprehensive description of the beneficiary's or the subordinates' duties that would demonstrate that she will be directing the management of the organization. There is no evidence submitted to show the number of hours attributed to each of the beneficiary's managerial and non-managerial duties. Evidence of record does not establish that the two employees have received any type of professional training or education, nor does it show that they manage or supervise a subordinate staff. There has been no evidence produced to show that the two employees are full-time workers. There has been no evidence presented that explains in detail how the beneficiary supervises or manages the two subordinates. The evidence of record demonstrates that the beneficiary continues to perform the services of the organization as a travel agent, rather than directing the activities of the organization. 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). Based upon the evidence submitted it does not appear that the reasonable needs of the petitioning company would plausibly be met by the services of the beneficiary as manager or executive.

On review of the complete record, it cannot be found that the beneficiary has been or will be employed primarily in an executive capacity. The description of the beneficiary's duties is not supported by documentary evidence, and does not establish that she directs the management of the petitioner. The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. The evidence does not establish an adequate distinction between the beneficiary's managerial and non-managerial duties. See *Ikea US Inc. v. US Dept. of Justice*, 48 F. Supp.2d 22, 24 (D.D.C. 1999) There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as directing and coordinating activities, making discretionary long range hires, planning and developing organizational policies and goals, and coordinating activities of divisions are without any context in which to reach a determination as to whether they would be qualifying as executive in nature. There has been no evidence submitted to establish how the beneficiary is to carryout her duties.

Furthermore, the petitioner has provided no comprehensive description of the beneficiary's or the subordinates' duties that would demonstrate that she will be directing the management of the organization or a major component or function of the organization, that she will be establishing goals and policies, that she will be exercising a wide latitude in discretionary decision-making, or that she would receive only general supervision or direction from higher level individuals. Paraphrasing the regulation as a substitute for a day-to-day description of the beneficiary's job duties is insufficient to demonstrate the beneficiary is acting in an executive capacity.

Based upon the evidence furnished, it cannot be found that the beneficiary has been or will be employed in a primarily managerial or executive capacity. For this reason, 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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.