

U.S. Department of Homeland Security

Citizenship and Immigration Services

**DO**

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

FILE: WAC 02 067 51125 Office: CALIFORNIA SERVICE CENTER

Date: JAN 07 2004

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).

IN BEHALF OF PETITIONER:

**PUBLIC COPY**

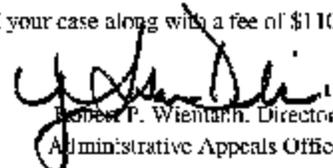
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wientarh, Director  
Administrative Appeals Office

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

The petitioner was incorporated in the State of Hawaii and is claimed to be an affiliate of DenTech International Co., Ltd. located in Tokyo, Japan. The petitioner is engaged in the operation of dental laboratories, which specialize in the manufacture and repair of dental prosthetic devices and appliances. The petitioner seeks to employ the beneficiary temporarily in the United States as its general manager. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant manager or executive pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

The director determined that the petitioner did not establish that the beneficiary had been or would be employed in a managerial or executive capacity.

On appeal, counsel states that the beneficiary's United States job duties meet the statutory definition of a manager.

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 issue in this proceeding is whether the beneficiary has been and will be primarily performing managerial or executive duties.

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, 5 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 the initial filing, in a letter dated December 11, 2001, the petitioner described the beneficiary's duties abroad as follows:

[The beneficiary] resigned from \_\_\_\_\_ in September 2001 and joined Dentech International. He was assigned to our company's Tokyo Branch where he served as the \_\_\_\_\_ of Technical Operations. [the beneficiary] is currently responsible for . . . supervising a staff of three (3) dental technicians including the technical manager . . . supervising the technical manager of the Osaka branch . . . [m]anagement of all aspects of the daily operation of all technical aspects of the Tokyo and Osaka branches of our dental laboratories. Supervision and coordination of activities of all personnel engaged in performing tests for quality control . . . supervision and evaluation of job performance of all Implant department laboratory and technical staff . . . creating written records of all evaluations for inclusion in the permanent employment files of the company and making decisions and personnel recommendations for the hiring, promotion and termination of employees based on the results of job interviews and analyses . . . formulating and implementing comprehensive programs and overseeing the instruction and training of technical employees. . . .

At the request of the director for additional evidence to establish that the beneficiary has been performing the duties of a manager abroad, the petitioner further elaborated, in a letter dated February 28, 2002, that the beneficiary:

[The beneficiary confers] with dentists, dental technicians and other dental service providers to clarify and interpret instructions, resolve technical problems, schedule production and resolve customer service inquiries . . . .

Upon review of the record, the descriptions provided indicate that a significant portion of the beneficiary's duties have been directly providing the tasks of the foreign entity. 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 beneficiary appears to be primarily involved in the daily operational tasks abroad as the record indicates that the beneficiary is responsible for the management of all aspects of the daily operation of all technical aspects of two branches and confers with dentists, dental technicians, and other dental service providers to clarify and interpret instructions, resolve technical problems, schedule production and resolve customer service inquiries. The beneficiary must be performing primarily executive or managerial functions rather than the tasks necessary to provide the services of the organization. See 8 C.F.R. § 214.2(1)(1)(ii). It must be evident from the documentation submitted that the majority of the beneficiary's actual daily activities are managerial or executive in nature. The Bureau is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title. Since these activities are "day to day" generalized duties then it appears, at most, the beneficiary performs operational rather than managerial or executive functions.

Further, the petitioner's evidence is not persuasive in establishing that the beneficiary has been primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. Although the record lists the three employees' titles as two dental technicians and a technical manager, the record does not contain a description of duties, educational levels, or salaries for the three employees under the beneficiary's supervision. Pursuant to section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), the term "managerial capacity" means an assignment within an organization in which the beneficiary primarily supervises and controls the work of other supervisory, professional, or managerial employees. See *id.* Here, the Bureau is not persuaded that the two dental technicians and the technical manager are supervisory, professional, or managerial employees. At most, the beneficiary appears to be acting as a first-line supervisor of nonprofessional employees. 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)(A)(iv) of the Act.

Further, the petitioner, in a letter dated December 11, 2001 described the beneficiary's prospective duties in the United States as follows:

[The beneficiary] will supervise a laboratory staff consisting of 5 employees. . . . Specifically, he will be empowered with the following specific job tasks and level of authority:

- Responsibility to review and make final decisions regarding the employment, promotion and termination of all laboratory employees in the Hawaii office;
- Supervision of the expansion of the company's existing marketing plan and development of a business expansion strategy to target new growth areas such as the Dicor Castible Department;
- Decision making authority over all financial and accounting practices of the Hawaii Regional laboratory. . . responsible for establishing budgets and implementing economic decisions including communication with senior management of the parent corporation to ensure compliance with all company policies and procedures; and

[The beneficiary] will report regularly to the senior management of the company and his immediate superior will be the president of the company. He will exercise discretionary decision making authority in order to hire and staff the regional office and implement all necessary corporate policies and guidelines to make the operation a success.

[The beneficiary] will receive a salary of \$39,600 per year.

At the request of the director for additional evidence to establish that the beneficiary will be performing the duties of a manager in the United States, the petitioner, in a letter dated February 28, 2002, further elaborated that:

- [The beneficiary] will be in charge of overseeing local activities to advertise

and expand the business in Hawaii and Guam. He will be responsible for developing and implementing plans to attract new business and resolve customer service issues;

- He will be responsible for administration of local office budgets, tracking cash flow requirements and supervising the manager in charge of accounting, accounts payable and accounts receivable . . . .

The description of the beneficiary's duties does not persuasively demonstrate that the beneficiary will have managerial control and authority over a function, department, subdivision, or component of the United States entity. The beneficiary's duties described are generally stated wherein the beneficiary will "establish budgets and implement economic decisions, be in charge to oversee local activities to advertise and expand the business, and be responsible for developing and implementing plans to attract new business and resolve customer service issues." Upon reviewing the broad and indefinite position description, Citizenship and Immigration Services (CIS) is unable to determine what the beneficiary will do on a day-to-day basis. The petitioner has not demonstrated that the beneficiary will be managing a function or component of the United States entity.

Further, the petitioner's evidence is not persuasive in establishing that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel who relieve the beneficiary from performing nonqualifying duties. The record indicates that in the United States office, the beneficiary will supervise a laboratory staff consisting of the following five employees:

- (1) Yumika Tanaka, administration and accounting, Bachelor degree in sociology, \$45,600 per year;
- (2) Nobuhiro Maeda, technical operation manager, two years post-secondary dental technician school, \$55,200 per year;
- (3) Hiroyuki Iwata, implant manager, two years post-secondary dental school, \$36,000 per year;

- (4) porcelain department manager, Bachelor degree in economics, \$36,000 per year; and
- (5) dental technician, AA degree, \$24,000.

Although the record lists the five employees' titles, educational levels, and salaries, the record does not contain a description of duties for the five employees under the beneficiary's supervision. The educational levels of some of the employees do not correlate with their positions. For example, Mr. the porcelain department manager, has a degree in economics. Based upon the descriptions provided, these employees appear to be nonprofessional. Therefore, the beneficiary would not be primarily supervising and controlling the work of other supervisory, professional, or managerial employees as required by the statute. See section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). At most, the beneficiary appears to be a first-line supervisor for the petitioner. 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. See *id.*

Counsel asserts that the director's decision "seems to place an incorrect interpretation in the petitioner's use of the word 'supervise' to describe the nature of the duties and managerial activities to be performed." Counsel provides that:

Webster's New Twentieth Century Unabridged Dictionary, 2nd Edition defines the word as Supervise: to oversee or direct worker or workers. Thus, the word does not imply any lack of managerial capacity or duties.

However, on appeal, counsel does not provide examples of the director's incorrect interpretation or provide precedent case law. CIS interprets the law based upon the statute, regulations, and precedent case law. Statutory law clearly provides that the employees supervised must be other supervisory, professional, or managerial employees. See section 101(a)(44)(A)(i) of the Act, 8 U.S.C. § 1101(a)(44)(A). Therefore, CIS is not persuaded that the beneficiary has been and will be supervising other supervisory, professional, or managerial employees.

The record also indicates, in part four of Form I-129, that the beneficiary will earn \$39,600 per year for his services as the petitioner's general manager. However, the aforementioned subordinates will earn salaries only slightly less or substantially more than the beneficiary. Although not determinative, this factor appears to indicate that the beneficiary will be paid in conjunction with the other employees and not as a general manager.

Further, beyond the decision of the director and not explicitly addressed in the decision, there are discrepancies in the record concerning the beneficiary's employment with the foreign entity. The record indicates that the L1A petition was filed December 17, 2001. The petition indicates that the beneficiary was employed by the foreign entity as of September 2000. In accordance with this date, a certificate of employment, dated November 15, 2001, states that the beneficiary was employed by the foreign entity as of September 1, 2000. However, counsel submitted a letter in response to the director's request, dated December 11, 2001, stating that the beneficiary was employed by the foreign entity as of September 1, 2001. If the beneficiary was not employed by the foreign entity until September 1, 2001 then the beneficiary would not be eligible for L-1A classification. Section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L) requires that the petitioner have 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. See *id.*

Based upon the record, 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.