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U.S. Citizenship  
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FILE: WAC 02 216 51517 Office: CALIFORNIA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:

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 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 being a wholesaler of leather goods. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its vice-president. The director determined that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in a managerial or executive capacity.

On appeal, counsel disagrees with the director's determination and asserts that the beneficiary's duties 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(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)(i)(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.

According to the documentary evidence contained in the record, the petitioner was incorporated in 2000 and claims to be a wholesaler of leather goods. The petitioner states that the U.S. entity is a branch of Almar Marroquinera Ci Limitada, located in Colombia. The petitioner declares two employees. The petitioner seeks to continue the beneficiary's services as its vice-president for a period of two years, at a weekly salary of \$500.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary 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 described the beneficiary as a sales administrator of leather goods. In a letter of support dated June 11, 2002, the petitioner stated that the beneficiary directs and manages the operations of the U.S. entity on a full-time basis. The petitioner also stated that the beneficiary would be responsible for the hiring of U.S. personnel during the entity's period of expansion.

The director determined that the evidence submitted by the petitioner was not sufficient to establish that the beneficiary would function in a managerial or executive capacity. The director also states that the beneficiary is responsible for supervising one other employee. The director continues by stating that there was no indication that the beneficiary would exercise significant authority over generalized policy. The director also

noted that the record does not establish that the U.S. entity contains the organizational complexity to support a managerial or executive position.

On appeal, counsel asserts that the director's decision was contrary to the evidence submitted and to relevant legal authorities. Counsel contends that the beneficiary is the petitioner's senior employee in the United States. Counsel further asserts that the beneficiary is responsible for all white-collar functions of the business including the negotiation of all contracts for purchase and sale. Counsel also states that the petitioner manages one employee, a warehouseman, whose functions consist of physical labor. Counsel further contends that similar one-person or a small staff office petitions have been granted by the AAO, and cites to unpublished decisions in support of his contentions. Counsel concludes by stating that the beneficiary does all the intellectual work and only needs one subordinate to perform the necessary physical labor.

Counsel's assertions are not persuasive. The record contains insufficient evidence to demonstrate that the beneficiary will be employed in a primarily managerial or executive capacity. The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. Proposed job duties described as: continue directing and managing the operations of the U.S. company, overseeing general operations, and assisting in the expansion of the U.S. entity are without any context in which to reach a determination as to whether they would be qualifying as managerial or executive in nature. Despite the director's request for additional evidence, the petitioner has not provided a comprehensive description of the beneficiary's purported duties or the percentage of time to be devoted to each to establish that the beneficiary will be primarily performing managerial or executive tasks. See *Ikea US, Inc. v. U.S. Dept. of Justice*, 48 F.Supp.2<sup>nd</sup> 22, 24 (D.D.C. 1999) (requiring the petitioner to provide adequate documentation). There is insufficient detail regarding the actual duties of the assignment to overcome the objections raised by the director. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that he will be directing the management of the organization or a major component or function of the organization, that he will be establishing goals and policies, or that he will be exercising a wide latitude in discretionary decision-making. The petitioner claims that the beneficiary will be vice-president of the overall organization. However, rather than managing a major department, subdivision, function, or component of the organization, it appears that she will actually be performing the services of the business. 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).

Counsel asserts on appeal that the instant case is similar to two other cases that have come before the AAO. Counsel contends that the AAO should follow the unpublished decisions in granting an extension of stay for the beneficiary, in that the beneficiary is capable of operating the entire U.S. organization with the assistance of only one physical laborer. Counsel has not shown that the facts of the instant case are similar to the decisions cited. Moreover, while 8 C.F.R. § 103.3(c) provides that CIS precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. An unpublished decision carries no precedential weight. See *Chan v. Reno*, 113 F.2d 1068, 1073 (9<sup>th</sup> Cir. 1997) (citing 8 C.F.R. § 3.1(g)). As the Ninth Circuit says, "[U]npublished precedent is a dubious basis for demonstrating the type of inconsistency which would warrant rejection of deference." *Id.* (citing *De Osorio v. INS*, 10 F.3d 1034, 1042 (4<sup>th</sup> Cir. 1993)).

Further, the petitioner's evidence is not sufficient in establishing that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties. The record demonstrates that the beneficiary will be supervising one physical laborer. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title. The record does not demonstrate that the U.S. entity contains the organizational complexity to support a managerial or executive position.

Although a company's size cannot be the sole basis for denying a petition, that element can nevertheless be considered. See, e.g. *Systronics Corp. v. INS*, 153 F.Supp.2d 7, 15 (DDC 2001). This is particularly true in light of other pertinent factors such as the nature of the petitioner's business, which can help to determine whether a beneficiary can reasonably be expected to 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. At the time of filing the petition in 2002, the petitioner had been established since 2000 and claimed to have a total of two employees. The petitioner did not submit evidence that it employed any subordinate staff members, subcontractors or independent contractors that would perform the actual day-to-day, non-managerial operations or function of the U.S. entity. There has been no evidence submitted to substantiate a reasonable need for a manager or executive position within the organization. See Section 101(a)(44)(C) of the Act. Based upon the evidence received, it cannot be found that the beneficiary 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.