

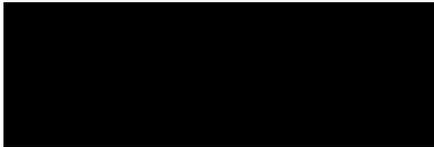
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20 Mass. Rm. A3042, 425 I Street, N.W.
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U.S. Citizenship
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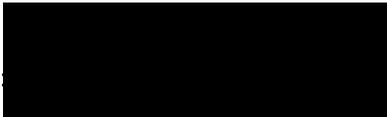


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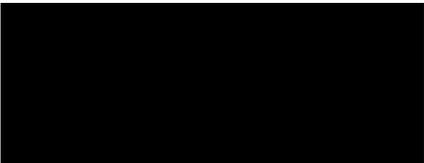
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ON RE: Petitioner:
Beneficiary

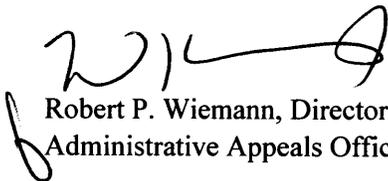


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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 Acting Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an international trade and business investment firm that seeks to employ the beneficiary temporarily in the United States as its general manager for a period of three years. The acting director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel states that the petitioner has experienced a very large increase in its business and requires the service of the beneficiary to handle the projected increase in business. Counsel further states that the beneficiary has strong management ability and a rich knowledge in the importing and exporting business.

The record shows that the petitioner was incorporated in the State of California on July 28, 2000. This visa petition was filed on March 12, 2002.

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 regulations at 8 C.F.R. § 214.2(1)(3) state 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 issue in this proceeding is whether the petitioner has established that the beneficiary would be employed in a qualifying managerial or executive capacity in the United States.

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, 8 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 its "Letter of Assignment" dated January 12, 2002, the president of Shenzhen Baoan Sheng Li Industry Co., Ltd., the petitioner's parent company abroad, outlines the duties of the beneficiary's position as follows:

In this capacity, Ms. Zeng, Xinghong's job duties will include: directing and coordinating the company's daily activities to obtain optimum efficiency and economy of operations and maximize profits; planning and developing the company's policies and goals, and implementing goals through subordinate administrative personnel; coordinating activities of departments to effect operational efficiency and economy; directing and coordinating promotion of products to develop new markets, increase share of market; analyzing department budget requests to identify areas in which reductions can be made, and allocating operating budget; conferring with administrative personnel, and reviewing activity, operating and sales reports to determine changes in operations; determining personnel policies, including hiring and firing administrative personnel.

In this case, the descriptions of the beneficiary's job duties are insufficient to warrant a finding that the beneficiary will be employed in an executive or managerial capacity. At the time of filing, the beneficiary would occupy the number two job in an eleven-person entity. Further, the organization chart indicates that the U.S. company already has five positions designated as managerial and/or executive: a president, vice general manager, import & export department manager, sales & marketing manager, and a delivery and warehouse department manager. There are no employees or functions left for the beneficiary to manage. Finally, it is noted that although the organizational chart lists eleven employees, the petitioner's payroll records for the corresponding period show only nine employees. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence does not persuasively demonstrate that the U.S. entity contains the organizational complexity to support an additional executive or managerial position.

The record does not reflect that the beneficiary will function at a senior level within an organizational hierarchy other than in position title. There is no comprehensive description of the beneficiary's duties that persuasively demonstrates that the beneficiary will be performing in a primarily managerial or executive capacity. Although the petitioner has submitted a position description for the record, the description does not indicate what the beneficiary does on a daily basis. Furthermore, the AAO cannot determine whether the claimed managerial duties are the beneficiary's primary duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the duties is managerial and what proportion is non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). The record contains no comprehensive description of the beneficiary's duties that demonstrates that the beneficiary will be

managing or directing the management of a department, subdivision, function, or component of the petitioning organization. Therefore, the petition may not be approved.

Finally, the petitioner's job description paraphrases the statutory definition of managerial capacity, without providing specifics. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the beneficiary has been employed abroad in a primarily managerial or executive capacity. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

In visa petition proceedings, the burden of proof 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.