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**U.S. Citizenship
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Services**

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FILE: SRC 02 100 50495 **Office:** TEXAS SERVICE CENTER **Date:**

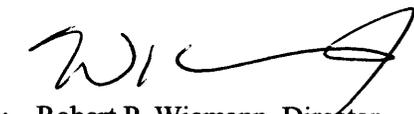
IN RE: **Petitioner:**
 Beneficiary:

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 Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner claims to be engaged in the business of selling watches and jewelry. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president and chief executive officer. The director determined that the petitioner had not established that the beneficiary has been and would be employed in a managerial or executive capacity. On appeal, counsel disputes the director's findings and submits a brief in support of the appeal.

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 U.S. petitioner states that it was established in 1998 and that it is a subsidiary of R.C. & Company, located in India. The initial petition was approved and was valid from February 6, 2000 to February 6, 2002. The petitioner seeks to extend the petition's validity and the beneficiary's stay for three years at an annual salary of \$24,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and will continue to be employed in a 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 support of the petition, the petitioner provided the following description of the beneficiary's job duties:

[The beneficiary] is the executive responsible for overseeing the development of [the petitioner]. He is responsible for managing the day to day operations of [the petitioner]. [The beneficiary] supervises all financial and administrative operations for the company, over which he exercises complete discretionary authority. His duties include supervising the development and implementation of the Company's marketing strategies as well as the recruitment and training of the staff of the U.S. office.

On March 20, 2002, the director requested that the petitioner submit additional evidence to establish that the beneficiary is employed in a managerial or executive capacity. The petitioner was asked to describe its staffing; provide the number of employees and their respective job duties; indicate the petitioner's hours of operation, as well as each employee's work schedule; and state whether the beneficiary ever performs the day-to-day duties of running a jewelry store.

The petitioner's response included the following additional description of the beneficiary's job duties:

As top executive, [the beneficiary] is tasked with exploring the overall investment climate of the U.S. market. His time is devoted to negotiating investments, establishing diversified business interests and overseeing the staff he has selected to actually perform the daily operations. There is sufficient staff to perform the daily duties of the retail stores. [The beneficiary] has ultimate responsibility for the continued success of these businesses.

The petitioner further stated that each of its two jewelry stores employs two retail specialists whose duties include selling the petitioner's merchandise, responding to customer inquiries, and inventory. The petitioner also stated that each retail outlet operates a total of 72 hours per week and that each employee works a total of 40 hours per week.

The director denied the petition noting that the petitioner failed to indicate who orders the stock, finds new suppliers, and who does the advertising and bookkeeping, all of which are necessary to operate the

petitioner's business. The director concluded that the petitioner failed to establish that the beneficiary will primarily perform managerial or executive duties.

On appeal, counsel states that the petitioner is not required to establish that the beneficiary exclusively performs managerial or executive duties, and claims that each of the petitioner's two retail outlets are staffed with sufficient personnel to conduct the daily operational tasks. Counsel further asserts that the director improperly relied on the small staff in concluding that the beneficiary assists in performing many of the petitioner's operational tasks. Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See section 101(a)(44)(C), 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small number of employees, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In the instant case, the petitioner points out that it has sufficient employees, aside from the beneficiary, to focus on assisting customers and selling the store merchandise. However, these are not the only operational tasks required to run the petitioner's business. As indicated by the director in the request for evidence, the petitioner still needs someone to find suppliers, do the marketing and advertising, as well as the bookkeeping duties. While the petitioner indicated that its sales staff would handle inventory, it failed to indicate whether that means keeping track of the sold merchandise, or whether that includes ordering merchandise and dealing with suppliers. Without a full description of the duties performed by the beneficiary's subordinates, it is impossible for the AAO to determine that the beneficiary is relieved of having to perform non-qualifying duties. It is noted that 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).

Furthermore, counsel claims that the record contains "uncontradicted evidence" that the beneficiary acts in a managerial or executive capacity and points to the beneficiary's title and description of duties to support her claim. Contrary to counsel's assertion, however, the beneficiary's description of duties is overly broad and fails to convey an understanding of what the beneficiary actually does on a daily basis. The petitioner did not clarify what the beneficiary actually does in "exploring the overall investment climate of the U.S. market." 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. 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.). In the instant case, the petitioner provides little more than paraphrases for the definitions of manager and executive. Moreover, counsel indicates that the beneficiary supervises the development and implementation of marketing strategies. However, with four sales clerks as the beneficiary's only subordinates, the AAO is led to the conclusion that the beneficiary actually performs the marketing function. While the beneficiary clearly possesses an executive title, the AAO must look beyond the position title to determine whether the beneficiary is acting in a managerial or executive capacity. As such, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). In the instant case, the job descriptions do not contain sufficient detail to indicate what duties comprise the beneficiary's daily schedule.

On review, the record as presently constituted is not persuasive in demonstrating that a majority of the beneficiary's duties have been or will be in a managerial or executive capacity. The record suggests that the petitioner does not have a sufficient staff to relieve the beneficiary of having to perform non-qualifying duties. Furthermore, even though the petitioner indicates that the beneficiary's duties including supervising a staff of employees, it has not submitted sufficient evidence to establish that such employees are professional, managerial, or supervisory personnel. Regardless of counsel's claim that the beneficiary fits the definition of executive, the petitioner has not demonstrated that it has reached or will reach a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis. Nor does the record demonstrate that the beneficiary primarily manages an essential function of the organization. Based on the evidence furnished, 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.

ORDER: The appeal is dismissed.