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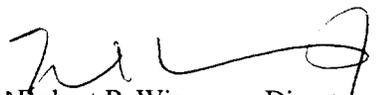
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

IN BEHALF OF PETITIONER:
[Redacted]

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, California 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 seeks to employ the beneficiary temporarily in the United States as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The U.S. petitioner, a corporation organized in the State of Arizona that is engaged in the import and export business, seeks to employ the beneficiary as its Import Manager. The petitioner claims that it is the subsidiary of Top Tyre Import & Export Co., located in Minia, Egypt.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director erroneously denied the petition, and claims that the petitioner has clearly established that the beneficiary will manage various components of the U.S. entity, and will thus be employed in a capacity that is primarily managerial. In support of this assertion, the petitioner submits a brief and additional evidence.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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 (l)(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.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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.

On an addendum attached to the initial petition, the petitioner described the beneficiary's job duties as follows:

- Maintain a constant audit check on incoming freight rates;
- Maintain an accurate inventory of all printed forms, office supplies, to avoid stock shortage;
- Hand selects all items from Egypt and arranges for delivery to United States;
- Audits all invoices for incorrect prices, short weights, overbilling, charging for goods that were never received;
- Responsible for all areas of operations and is heavily involved in the oversight, approval, [and] planning processes of the following areas: cost efficiencies, monitoring and improving levels of productivity and quality;
- Provide analysis of business results to Top Tyre Import & Export Co. on a monthly, quarterly, and annual basis;
- Participate in the strategic planning process of operations, Identification, Analysis and Evaluation of problems;
- Manages the procurement of equipment, tools, raw materials, packaging materials, parts, services, and supplies necessary for operation of an organization;
- Confers with vendors and analyzes vendors' operations to determine factors that affect prices and determines lowest cost consistent with quality, reliability, and ability to meet required schedules;
- Oversees the review of proposals, price negotiation, supplier selection, purchase expediting, deliveries, payment approval, and records maintenance;
- Compiles and analyzes statistical data to determine feasibility of buying products and to establish price objectives;
- Compiles information from periodicals, catalogs, and other sources to keep informed on price trends and manufacturing processes;
- Confers with vendors and analyzes vendors' operations to determine factors that affect prices and determines lowest cost consistent with quality, reliability, and ability to meet required schedules;
- Reviews proposals, negotiates prices, selects or recommends suppliers, analyzes trends, follows up orders placed, verifies delivery, approves payment, and maintains necessary records;
- Procures contracts with local vendors to arrange for sales of goods to them.

On July 8, 2002, the director requested additional evidence. Specifically, the director requested: (1) payroll records from the foreign entity to verify the beneficiary's employment abroad; (2) evidence supporting the existence of a qualifying relationship between the U.S. and foreign entities, including the foreign entity's annual reports, owners, and its Articles of Incorporation; (3) evidence supporting the beneficiary's claim that he has been employed abroad in a primarily managerial or executive capacity, including the number of employees employed by the foreign entity, a copy of its organizational chart, and a list of the beneficiary's duties while employed overseas; (4) the beneficiary's purpose for coming to the United States; and (5) the U.S. entity's reason for hiring the beneficiary, with specific comparison of his intended position with the current managerial and executive positions already existing in the U.S. entity.

In response, counsel for the petitioner submitted a letter dated August 1, 2002 with the requested documentation, including a letter from the president of the U.S petitioner.

On September 20, 2002, the director denied the petition. The director determined that the evidence in the record was insufficient to warrant a finding that the beneficiary would be employed in a primarily managerial or executive capacity by the U.S. entity, and relied on two main factors in rendering his decision. First, the director concluded that the beneficiary would not be employed in a primarily managerial or executive capacity, and stated that “the beneficiary’s duties will be directly providing the services of the business.” Second, the director noted that the evidence in the record was insufficient to establish that the beneficiary would be managing a subordinate staff of professional employees. In response, counsel on appeal alleges that the director’s conclusions were erroneous, and asserts that the record clearly reflects that the beneficiary will manage a component of the company and thus satisfies the regulatory requirement of working primarily in a managerial capacity.¹

Upon review, counsel’s assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner’s description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). The petitioner’s description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid “executive/manager” and rely on partial sections of the two statutory definitions.

In this case, the petitioner provided a very specific and detailed list of all of the beneficiary’s intended duties. In addition to the preliminary list provided as an addendum to the initial petition, the record also contains an updated list provided by the president of the U.S. entity, who stated in an undated letter that the beneficiary “will be responsible for the planning, organization, directing and controlling” of the U.S. entity. This letter was provided in response to the director’s request for evidence, and was included in counsel’s response filed on or about August 1, 2002. The updated list contained in this letter included additional tasks not previously identified, including “generate all purchase orders” and “contact any supplier or airline to apply for credit of any damaged, out of specification, or mis-shipped [sic] products.”

On appeal, counsel refers to the president’s letter, and asserts that the duties listed therein constitute essential functions within the organization, thus fulfilling the requirements of 8 C.F.R. § 214.2(1)(1)(ii)(B). Counsel stresses that the beneficiary’s duties qualify him as a function manager, and claims that in light of this factor,

¹ Counsel points out that the director’s decision erroneously accuses counsel of being unresponsive to his request for evidence, in that counsel failed to provide documentation explaining the beneficiary’s proposed duties in the United States. The AAO notes that the request for evidence only requested documentation with regard to the beneficiary’s duties while employed abroad, and agrees with counsel’s position that the director’s statement is misplaced. The decision, however, was not based on a lack of evidence in the record; rather, it was based on a finding that the stated duties of the beneficiary were not managerial in nature. Consequently, although the director’s statement was erroneous, it did not unfairly prejudice the petitioner.

the director's refusal in part on the basis that the beneficiary will not supervise a subordinate staff of professionals is misplaced and therefore inapplicable to this analysis. Specifically, counsel alleges that "the beneficiary does not have to supervise or control the work of other employees," and that "it is sufficient that he manages an essential function within the organization, or a department or subdivision of the organization."

While Citizenship and Immigration Services (CIS) will look to all aspects of the regulation when evaluating the beneficiary's eligibility, the AAO acknowledges that the petitioner is requesting consideration of the beneficiary as a function manager as opposed to a personnel manager. Consequently, the AAO will review the beneficiary's eligibility under this portion of the regulation. The AAO notes for the record that there is no evidence which would establish that the beneficiary qualifies as a manager or executive under the regulation, since it is apparent, by the record and by counsel's contention, that the beneficiary does not supervise or oversee any subordinate employees.

Accordingly, the AAO will review the beneficiary's qualifications as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. 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).

In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. Counsel for the petitioner, in her letter dated November 18, 2002, identifies the essential function to be managed by the beneficiary as the "import of goods." However, the beneficiary's list of duties includes tasks that require first-hand participation and performance, such as contacting suppliers, generating purchase orders, hand selecting items from Egypt for delivery to the United States, conferring with vendors, auditing invoices, and maintaining inventories to avoid stock shortages. These tasks are clearly low-level collateral tasks that are superfluous to the company's essential operations and not within the scope of managerial duties. As stated above, 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. *See id.* In this case, the evidence clearly demonstrates that the beneficiary will perform the essential tasks necessary for the successful importation of goods into the United States, thereby negating the petitioner's claim that he will be employed in a capacity that is primarily managerial.

Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3). For this reason, the petition may not be approved.

Beyond the decision of the director, the AAO notes some additional issues not addressed by the director prior to adjudication of this appeal. First, the petition also may not be approved because there is insufficient evidence of a qualifying relationship between the U.S. entity and the Egyptian entity. On the form I-129, the U.S. petitioner claims that it is a subsidiary of the foreign entity. However, the record contains no independent evidence to corroborate this claim. Counsel for the petitioner acknowledged that the annual reports provided for the Egyptian Entity note that the entity had no subsidiaries, which contradicts the claim set forth in the initial petition. Additionally, the record alleges that the Egyptian entity owns one-third of the U.S. entity, but provides no further documentation to support this contention. Since the definition of "subsidiary" as set forth in 8 C.F.R. §214.2(l)(1)(ii)(K) requires the parent to own, directly or indirectly, more than half of the entity, the claims set forth in the record, even if supported by evidence of ownership, would still be deficient. For this additional reason, the petition will be denied.

Secondly, the record does not contain sufficient evidence that the beneficiary was employed in a primarily managerial capacity during his employment with the foreign entity, as required by 8 C.F.R. § 214.2(l)(3)(iv). Counsel refers to the beneficiary's overseas position as "Import and Export Manager," but emphasizes the beneficiary's administrative duties and "first hand" experience in the industry. No specific description of the beneficiary's managerial duties abroad has been provided, and the only notable discussion of his duties abroad includes the statement that the beneficiary "has been responsible for managing the import and export" of various items including chandeliers, lamp shades, sconces, etc. 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. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The petitioner has failed to demonstrate that the beneficiary's position abroad was primarily managerial or executive in nature. For this additional reason, the petition will be denied.

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 director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.