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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: WAC 03 042 51787 Office: CALIFORNIA SERVICE CENTER Date: OCT 15 2004

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)

ON 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

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prevent unauthorized  
invasion of your privacy

**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 a business engaged in the interstate transportation of automobiles and the distribution of pure water. The petitioner claims to be a subsidiary of Springs S.R.L., located in Buenos Aires, Argentina. The petitioner declares 7 to 12 employees and \$361,000.00 in gross annual income. It seeks to extend its authority to employ the beneficiary temporarily in the United States as its general manager for three years, at an annual salary of \$48,000.00.

The director determined that the petitioner had not submitted sufficient evidence to demonstrate that the beneficiary would be employed primarily in a managerial or executive capacity with the U.S. entity.

On appeal, the petitioner disagrees with the director's determination and asserts that the beneficiary's duties have been and will continue to 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)(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 with 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 serves in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary's employment with the U.S. entity will be primarily managerial or executive in nature.

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.

The petitioner stated in the petition that the beneficiary's proposed duties would consist of: conducting market research; supervising managerial staff; setting policies and goals for the corporation; and serving as general manager for the U.S. entity.

In response to the director's request for additional evidence on the issue, the petitioner submitted copies of the U.S. entity's organizational chart, a listing and description of employees, and a description of the beneficiary's duties. The petitioner also submitted copies of the company's IRS Form 1120 for the years 1999 through 2001, and additional state tax documents.

The petitioner described the beneficiary's proposed duties as:

Directs, manages and controls all aspects of the U.S. enterprise. Directs, through subordinate supervisory personnel all departments within the enterprise. Determine appropriate time to open other branches and as well as diversification options, selecting business sites. [sic] Has absolute management and control of the business, subject only to direction from foreign based CEO.

The petitioner further described the beneficiary's duties as:

1. Plans, organizes, controls, integrates and evaluates the work of the client service teams including client accounting, administration marketing and customer services.
2. Works closely with the company's executive team in defining organizational strategy and carrying out the company's vision, mission and objectives. Provides collaborative leadership and works with company managers to develop and retain highly competent, service-oriented staff.
3. Provides oversight and strategic support to the management team to ensure organizational strategies are carried out in conjunction with the company's vision, mission and objectives.
4. Takes a lead role in all budgeting activities, and is specifically responsible for financial profit and loss.
5. Takes an oversight role in organizations structure design.
6. Implements new procedures and systems.
7. Serves as a member of the company executive team to define and support organizational objectives.

The U.S. entity's organizational chart depicts the beneficiary as general manager. The chart also demonstrates the following employees under the beneficiary's supervision: a marketing manager, human resources administrative supervisor, a truck mechanic, assistant mechanic, four drivers, two assistant drivers, and a loader for the truck driving business; and a sales manager and salesmen for the pure water business.

The director denied the petition determining that the record was insufficient to establish that the beneficiary would be employed by the U.S. entity primarily in a managerial or executive capacity. The director noted that the record was void of any comprehensive description of the beneficiary's proposed duties. The director stated that the evidence did not demonstrate that the beneficiary would manage a subordinate staff of professional, managerial or supervisory personnel who would relieve the beneficiary from performing non-qualifying duties.

On appeal, counsel disagrees with the director's decision and asserts that the evidence is sufficient to establish that the beneficiary will be employed by the U.S. entity in a managerial or executive capacity. Counsel asserts that the description given of the beneficiary's duties is specific and demonstrates that he will be responsible for managing the different departments within the company. Counsel also asserts that the evidence of record is sufficient to show that the beneficiary will manage a subordinate staff of professional, managerial or supervisory personnel who would relieve the beneficiary from performing non-qualifying duties.

Upon review, counsel's assertions are not persuasive. Neither the petition nor the evidence submitted by the petitioner is sufficient to establish that the beneficiary will be employed primarily in a managerial or executive capacity. 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(l)(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 in nature. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. In the instant matter, there has been no clarification of positions.

The petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. In response to the director's request for evidence, the petitioner stated that the beneficiary spends 100 percent of his time managing the U.S. entity. On appeal, counsel asserts that the beneficiary is performing managerial or executive duties in that he signed the company lease agreement and income tax returns. This evidence demonstrates an apparent authority to sign business documents on behalf of the U.S. entity; however, a few authorized signatures do not demonstrate that the majority of the beneficiary's time is spent performing managerial or executive duties.

The petitioner described the beneficiary's duties to include: conducting market research; supervising managerial staff; setting policies and goals for the corporation; and serving as general manager for the U.S. entity. The petitioner did not, however, define the organization's goals, policies, or clarify what the marketing research will actually entail. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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 fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as managerial or executive and it fails to quantify the time the beneficiary spends on them. The petitioner contends that it would be impossible to calculate percentages of time the beneficiary will spend performing each task, where

some of the tasks are performed daily, some weekly, and some quarterly. Contrary to counsel's belief, this failure of documentation is important because several of the beneficiary's duties do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Although the petitioner asserts that the beneficiary will be managing a subordinate staff, the record does not establish that the subordinate staff is composed of supervisory, professional, or managerial employees. See section 101(a)(44)(A)(ii) of the Act. In the instant matter, the petitioner claims that the beneficiary will have the HR supervisor, marketing manager, sales manager, and lead drivers under his direction. On appeal, counsel refers to documents (Articles of Incorporation and tax records) that have not been submitted into evidence to substantiate the petitioner's claim. Even if the AAO were to take into consideration the descriptions given by counsel concerning the contents of the missing documents, there would still be insufficient evidence in the record to demonstrate that the beneficiary's subordinates are supervisory, professional, or managerial employees. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Title alone cannot be used to substantiate the actual duties performed by the subordinates or to explain how they interrelate with the beneficiary's duties. It appears from the record that the beneficiary will primarily perform as a first-line supervisor rather than as a manager or executive. A first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Here, there has been no evidence submitted to demonstrate what the minimum educational requirements are for entry into the subordinates' positions.

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that an advanced degree is actually necessary, for example, to perform the administrative work of the marketing manager or human resource supervisor, who is among the beneficiary's subordinates.

In review, the evidence of record is insufficient to establish that the beneficiary will be employed primarily in a managerial or executive capacity. Accordingly, the appeal will be dismissed.

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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.