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U.S. Citizenship  
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Services

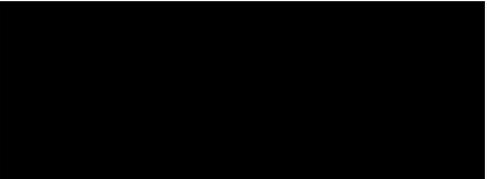


FILE: WAC 03 162 50008 Office: CALIFORNIA SERVICE CENTER Date: **OCT 22 2004**

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

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prevent unwarranted  
invasion of personal 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 claims to be in the business of manufacturing and selling electronic and electrical products. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States in a managerial or executive capacity, namely as its accounts, finance, and marketing manager. The director determined that the evidence was insufficient to establish that the beneficiary would be employed primarily in a managerial or executive capacity.

On appeal, counsel contends that the beneficiary will be employed primarily in a managerial capacity, as a function manager.

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) further 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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

- A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section;
- B) Evidence that the United States entity has been doing business as defined in paragraph (1)(1)(ii)(H);
- C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- E) Evidence of the financial status of the United States operation.

According to the documentary evidence contained in the record, the petitioner was incorporated in 1991 and is described as being in the business of manufacturing and selling electronic and electrical products. The petitioner states that the U.S. entity is a branch office of Daewoo Electronics Co., Ltd., located in Seoul, Korea. The petitioner declares twelve employees. The petitioner seeks the continuation of the beneficiary's services as accounts, finance, and marketing manager for a period of three years, at a yearly salary of \$70,000.00.

The issue to be addressed in this proceeding is whether the petitioner has submitted sufficient evidence to establish that the beneficiary has been and will be employed in a primarily managerial 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.

The petitioner asserted in the petition that the beneficiary would be responsible for managing the accounting, finance, and marketing departments. The petitioner further asserted that the beneficiary would be responsible for managing the purchase of import materials as well as locally produced raw materials for production; manage contract negotiations for equipment, products, and supplies to be purchased; manage the evaluation of the financial operations; and develop and control the product cost analysis for recommendation to the United States, Mexican, and corporate management.

In response to the director's request for additional evidence, the petitioner provided an additional description of the beneficiary's job duties to include:

#### ACCOUNTING (25%)

- Making of consolidated financial statements.
- Report on company operations to corporate officers in Seoul, Korea.
- Manage the importing of production materials from overseas and the purchase of law [sic] materials through local markets.
- Control and development of sound production costs analysis for presentation to other senior level management and executives.
- Manage the salaries of employees and other expense.
- Manage of accounting and financial audit.
- Prepare progress reports for presentation daily, weekly, monthly [sic].

#### FINANCING (20%)

- Evaluation of financial operation.
- Control and develop.
- Make a loan or any other transaction with banking facilities.
- Manage the negotiations and contracting for the purchase of equipment, products, and supplies for manufacturing.

#### BUDGETTING [sic](15%)

- Making the budget for the coming year and each transaction.
- Control of execution for the established budget.

#### TAX (15%)

- Declare the tax report and pay to the IRS, AZ state Revenue

- Manage annual tax report.
- Analysis [sic] and advise all taxual [sic] operation about transaction related to US, Korea and Mexico.

MARKETING (10%)

- Research of market trend and gather information for the business.
- Forecast of coming years economic [sic] business trends.

PLANNING (10%)

- Analysis of future business plan.
- Study of restructure for company organization.
- Connect to exterior specialists for the operation improvement.

OTHERS (5%)

- Special projects and reviews as requested by US company's management.
- Performance evaluation of professional staff.

Also in response to the director's request for additional evidence, the petitioner submitted copies of the U.S. entity's State Quarterly Withholding Tax Return for the first quarter of 2003 that listed names and salaries for 15 employees. The petitioner also submitted a copy of the U.S. entity's organizational chart that demonstrated the beneficiary's position in the accounts and finance department as "manager of accounting [sic], financing, budgetting [sic], tax, and marketing research." The organizational chart also depicts the subordinate's position in the planning department as "management of foreign or branch work and coordinate[ing] for special projects [and] operation[s]."

The director determined that the petitioner had failed to submit sufficient evidence to establish that the beneficiary will be performing in a primarily managerial capacity and denied the petition accordingly. The director noted that based upon the evidence of record, it appeared that the beneficiary would be performing the duties associated with accounting, finance, and marketing himself, and that his subordinate depicted in the company's organizational chart appears to be performing in a category unrelated to that of the beneficiary's.

On appeal, counsel disagrees with the director's decision and asserts the beneficiary will be employed primarily in a managerial capacity. Counsel argues that the beneficiary will function as a function manager. Counsel asserts that the director's decision misstates the statutory and regulatory definition of "managerial." Counsel further asserts that the director's decision mischaracterized the evidence submitted and the beneficiary's position description. Counsel notes that the beneficiary supervises a subordinate who is responsible for the planning and management of foreign or branch work, and the coordination of special projects and operations. Counsel also notes that since the beneficiary manages all financial and accounting issues, the beneficiary must also manage special projects and operations. In addition, counsel notes that the beneficiary is responsible for all accounting and finance issues, and reports directly to the company's president. Counsel concludes by asserting that the beneficiary is a senior level manager of a key function in that he is responsible for four factories in Mexico in addition to the U.S. branch.

Counsel's argument is not persuasive. As will be discussed below, no documentary evidence supports counsel's assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Upon reviewing the petition and the evidence, the petitioner has not established that the beneficiary has been or would be employed primarily in a managerial or executive capacity. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial. Here, 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, but it fails to specify how the duties are that of a function manager rather than an activity manager. This failure of documentation is important because several of the beneficiary's daily tasks, such as preparing consolidated financial statements, negotiating bank loans, preparing the annual budget, preparing and paying company income tax, and researching market trends, 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).

In addition, the petitioner lists managerial duties such as managing the import of production materials; managing the accounting and financial audits; and managing contract negotiations for the purchase of equipment, products and supplies. However, there is no evidence to demonstrate with specificity whom the beneficiary is managing and what their duties are, and how he manages the duties within the company structure. Counsel contends that the beneficiary supervises the subordinate in charge of planning and management, that the beneficiary manages all financial and accounting issues, and that therefore, the beneficiary also manages special projects and operations. The U.S. entity's organizational chart demonstrates that one subordinate is under the direction of the beneficiary, and that he is responsible for planning and coordinating for special projects and operations. Contrary to counsel's contentions, there has been no independent documentary evidence submitted to show any interrelation between the functions performed by the beneficiary and the responsibilities of his subordinate. Moreover, the record demonstrates that only 5 percent of the beneficiary's time is spent on special projects and operations.

Furthermore, 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. Evidence of record demonstrates that the beneficiary, rather than managing a function of the organization, will spend the majority of his time performing the function in that he prepares consolidated financial statements, prepares financial progress reports, conducts business with banking facilities, constructs yearly

budgets, researches market trends, and prepares tax reports. There has been insufficient evidence presented to establish that the beneficiary has been or will be employed primarily in a managerial capacity, as a function manager.

In visa petition proceedings, the burden of proving eligibility for the benefit sought rests solely 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.