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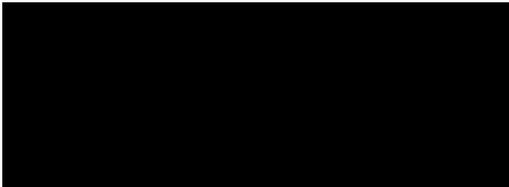
AUG 26 2005

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)

IN 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 filed this nonimmigrant petition seeking to extend the employment of its president 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 petitioner is a corporation organized in the State of Florida in April 2002 that it is engaging in the operation of a grocery store, gas station and other businesses. The petitioner claims that it is the wholly-owned subsidiary of [REDACTED] located in Mumbai, India. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would 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's decision is in error and that the petitioner has clearly established that the beneficiary's duties in the U.S. entity are executive in nature.

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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, 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 (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (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.

At issue in the present matter is whether the beneficiary would 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.

In the L Supplement to Form I-129, Petition for Nonimmigrant Worker, the petitioner described the beneficiary's job duties in the U.S. entity as "[p]resident in charge of a company involved in the operation of a grocery store and as station, and other retail businesses." The petitioner submitted no other description of the beneficiary's job duties at the time the petition was filed.

On November 13, 2003, the director requested additional evidence. Among other things, the director requested (1) information relating to the U.S. entity's staff, including the number of employees, a description of the current staffing level setting forth the name, title, duties, qualifications, hours worked per week, and date hired for each employee; (2) an organizational chart; (3) copies of Forms W-2 filed for 2002; and (4) a description of the beneficiary's duties broken down by percentage of time, including a specific description of the duties, the number of employees supervised, and how the duties differ from current managers and executives within the company.

In response, counsel for the petitioner submitted the following description of the beneficiary's job duties:

[The beneficiary] is [p]resident of the company. There is no higher individual within the entire organization. She directs the management of the organization, establishes the company's goals and policies, exercises wide latitude in discretionary decision making, and receives no supervision from anyone else, since there is no one higher than her in the organization.

[The beneficiary] has numerous duties as president of the company. Her primary function is to plan, organize, direct and control the organization's major functions through the company's employees. She confers with the store manager and other employees to plan business objectives, to develop organizational policies, and to establish responsibilities and procedures for attaining objectives. She reviews activity reports and financial statements to determine progress and status in attaining objectives and revises objectives and plans in accordance with

current conditions. She directs and coordinates formulation of financial and sales programs to provide new sources of income, to maximize returns on investments, and to increase sales. She works with suppliers and distributors to obtain the best prices for the products that the company sells. In addition, she holds regular staff meetings to insure that the above goals are realized, and to evaluate staff performance. In that regard, she is ultimately responsible for the hiring and firing of all employees of the company.

The above duties comprise approximately 90% of her weekly work schedule. The exact amount of time spent on each duty varies from week to week depending on the items that are most important at any particular time.

Counsel submitted an organizational chart for the U.S. entity, showing the beneficiary supervising a manager, who in turn supervises two clerks. Counsel also provided job descriptions for the store manager and the stock clerk, who are full-time employees, and Forms W-2 for the year 2003 for the beneficiary and the two full-time employees. Counsel indicated that because the remaining clerk position is filled on an "as needed" basis, there is no Form W-2 for any person in that position.

On February 18, 2004, the director denied the petition. The director determined that the record does not convincingly demonstrate that the petitioner has any qualifying employees. The director concluded that the beneficiary would be carrying out the day-to-day operations of the U.S. entity rather than supervising those operations. The director further found that the record is not persuasive that, as of the filing date of the petition, the U.S. entity had grown to the point where it could remunerate the beneficiary, or where the beneficiary would function at a senior level within an organizational hierarchy or with respect to a function. Consequently, the director found the petitioner has not sufficiently demonstrated that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner asserts that the director's decision is contrary to the law and facts and that the petitioner has clearly established that the beneficiary's duties in the U.S. entity are executive in nature. In his appeal brief, counsel argues that the director has misstated or overlooked some of the evidence presented, particularly with respect to the petitioner's staff and the company's income. Counsel restates some of the beneficiary's job duties and argues that the beneficiary "clearly and definitively meets each of the four criteria to qualify as an executive."

On reviewing the petition and the evidence, the AAO finds that the evidence of record is insufficient to establish that the beneficiary would be employed by the U.S. entity 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 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. For example, the petitioner states that the beneficiary "confers with the store manager and other employees to plan business objectives, to develop organizational policies, and to establish responsibilities and procedures for attaining objectives," "reviews activity reports and financial statements to determine progress

and status in attaining objectives and revises objectives and plans in accordance with current conditions," and "directs and coordinates formulation of financial and sales programs." The petitioner did not, however, define the objectives and policies in question, or clarify who actually carries out the "responsibilities and procedures for attaining objectives," or prepares the "activity reports and financial statements" the beneficiary purportedly reviews, or formulates "the financial and sales programs" the beneficiary is said to direct and coordinate. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *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).

Further, rather than providing a specific description of the beneficiary's duties, the petitioner generally paraphrased the statutory definition of executive capacity. See section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). For instance, the petitioner stated that the beneficiary "directs the management of the organization, establishes the company's goals and policies, exercises wide latitude in discretionary decision making, and receives no supervision from anyone else, since there is no one higher than her in the organization." However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient to meet the petitioner's burden of proof. 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. at 1108; *Avyr Associates Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

In addition, the petitioner describes the beneficiary as "work[ing] with suppliers and distributors to obtain the best prices for the products that the company sells." Negotiating with vendors is a task necessary to provide the company's service or product and is not considered managerial or executive in nature. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Furthermore, as noted earlier, even though the petitioner claims that the beneficiary "reviews activity reports and financial statements" and "directs and coordinates formulation of financial and sales programs," it does not appear that anyone else on the petitioner's staff actually prepares the "activity reports and financial statements" the beneficiary purportedly reviews or formulates "the financial and sales programs" the beneficiary is said to direct and coordinate. If the beneficiary herself is preparing the reports and formulating sales programs, rather than reviewing, directing and coordinating these functions as the petitioner claimed, the AAO notes 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 of Scientology International*, 19 I&N Dec. at 604. Moreover, if the beneficiary's involvement in these functions is not as the petitioner claimed, the AAO is left to question the validity of the petitioner's claim and the remainder of the beneficiary's claimed duties. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Furthermore, the definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not

spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The AAO notes that the director requested that the petitioner provides a description of the beneficiary's duties broken down by percentage of time. In response, the petitioner describes the beneficiary's duties and stated generally that the described duties "comprise approximately 90% of her weekly work schedule." That response fails to quantify the time the beneficiary spends on each duty, as the director requested. This failure of documentation is important because, as discussed above, several of the beneficiary's daily tasks do not fall directly under traditional managerial duties as defined in the statute. Thus, based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is executive or managerial in nature, and what proportion is not. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Moreover, the statement that all of the duties described comprise 90% of the beneficiary's weekly work schedule, without a further breakdown, is not responsive to the director's request. Failure to provide requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In light of the foregoing, the AAO concludes that the petitioner has not established that the beneficiary would be employed in the United States in a primarily executive or managerial capacity, as required by 8 C.F.R. § 214.2(l)(3).

Beyond the decision of the director, the record does not contain sufficient evidence that the petitioner has been engaging in the regular, systematic and continuous provision of goods and/or services in the United States for the entire year prior to filing the petitioner to extend the beneficiary's status. Pursuant to the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B), the petitioner is expected to submit evidence that it has been doing business since the date of the approval of the initial petition. In this instance, the initial petition for the new office was approved for the period from September 27, 2002 through September 27, 2003. However, in response to the director's request for a copy of the 2002 U.S. income tax return for the U.S. entity, counsel for the petitioner responded that the petitioner did not have a tax return for the year 2002 as the U.S. business did not begin operations until September 1, 2003. The petitioner submitted no other evidence that it has been doing business since the approval of the initial petition. Thus, the petitioner simply has failed to satisfy the regulatory requirement set forth in 8 C.F.R. § 214.2(l)(14)(ii)(B). For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if the plaintiff shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.