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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: WAC 03 012 55110 Office: CALIFORNIA SERVICE CENTER Date: JUN 19 2005

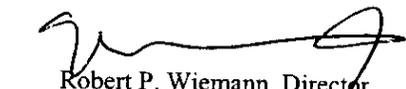
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

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 petitioner claims to be in the import and export business. The petitioner claims that the U.S. entity is a subsidiary of Shenyang Tonghua International Business Spread Company Ltd., located in Shenyang, China. The petitioner declares six employees with a gross annual income of \$456,938.00. It seeks to employ the beneficiary temporarily in the United States as its deputy general manager for a period of three years, at a monthly salary of \$1,500.00. The director determined that the petitioner had not submitted sufficient evidence to demonstrate that the beneficiary will be employed by the U.S. entity primarily in a managerial or executive capacity.

On appeal, counsel disagrees with the director's determination and asserts that the beneficiary's duties will 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.

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 described in the petition the beneficiary's proposed duties as: "managing daily business operations regarding purchasing, import/export, delivery scheduling and financing; direct corporate administrative matters regarding office management, inventory control and business operational procedure."

The petitioner submitted a letter of support dated October 3, 2002 in which the beneficiary's proposed duties are described as:

Due to the business necessity, [the beneficiary] has been dispatched to the U.S. company to work as the Deputy General Manager. As the Deputy General Manager of [the U.S. entity], [the beneficiary] will have the job duties to manage daily business operations regarding purchasing, import/export, delivery scheduling and financing; direct corporate administrative matters regarding office management, inventory control and business operational procedure. Under the supervision of the general manager, the Deputy General Manager has the plenary power to make all Business decision, set up business short and long term business goals and objectives, to hire and fire local employees, make evaluation reports of personal and hire and fire employees and recommend promotions.

The petitioner submitted a copy of the U.S. entity's organizational chart which depicted the company's managerial hierarchy and staffing levels to include: Mingzhong Wei as general manager, Xia Hong as deputy general manager, a marketing department consisting of Gary Boswell as manager and Winnie Leung and David Zhou as sales representatives. The chart also depicted a financial department with the name Wei Li located directly below the department title and an administrative department with the name Rea Xu located directly below the department title.

In a response to the director's request for additional evidence, the petitioner submitted a letter, dated November 12, 2002, in which the subordinate's duties are described in part, as:

1. Gary T. Boswell – Marketing Manager; in [sic] responsible for the marketing activities and strategies;
2. Wei Li – Financial Manager; in charge of all the financial and accounting matters and coordinating with CPA for annual financial report;
3. Rea Xu – Administrative Officer; in charge of all the administrative and daily secretarial job[s];
4. Winnie Leung – Marketing Associate; in [sic] responsible for the sale account and contact with buyers; and
5. David Zhou – Marketing Associate; in [sic] responsible for the sales accounts and contact with buyers.

The director determined that the petitioner had failed to submit sufficient evidence to establish that the beneficiary will be employed primarily in a managerial or executive capacity. The director stated that the majority of the beneficiary's duties were identical to and overlapped with that of the general manager, the marketing manager, the finance manager, and the administrative officer. The director noted that the beneficiary's duties would be a combination of a market analyst and sales representative. The director concluded by noting that in review of the overall purpose and stage of development of the U.S. entity, the petitioner had failed to establish that the organization required another managerial or executive position.

On appeal, counsel argues that the U.S. entity's general manager is responsible for the overall operation of the business from international operations to expansion including cooperative communication with parent company officials. Counsel contends that the general manager spends half of his time outside of the United States fulfilling his responsibilities. Counsel argues that the general manager's duties consist of coordinating the purchase of basic materials and expansion of the business into countries abroad. In comparison, counsel contends that the beneficiary would be responsible for the day-to-day operations of the U.S. entity. Counsel asserts that the general managers and the deputy general manager's responsibilities are different in that the former manager's responsibilities are carried out predominately in other countries as well as U.S. based operations; while on the other hand, the latter's responsibilities are limited to the U.S. entity's overall operations. Counsel concludes that although their duties are similar they are separate and distinct. Counsel resubmits a copy of the U.S. entity's organizational chart on appeal.

The record is not persuasive in demonstrating that the beneficiary will be employed in a primarily managerial or executive capacity. When examining the managerial or executive capacity of the beneficiary, the AAO will look first to the petitioner's description of the beneficiary's 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.

Further, 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 quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as scheduling deliveries, inventory control, purchasing materials, and finance management 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 manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

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's duties will include making all business decisions and initiating short-term and long-term business goals and objectives. The petitioner did not, however, provide a detailed description of the goals, policies, or business decisions to be made by the beneficiary. 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 described the beneficiary as being involved in the purchasing of imports and exports, delivery scheduling, financing, inventory control, and direct corporate administration. Since the beneficiary would be directly involved in delivery scheduling, financing, inventory control and the purchase of the petitioner's product, she is performing tasks necessary to provide a service or product, and these duties are not considered managerial or executive in nature. 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).

There is insufficient detail regarding the actual duties of the assignment to overcome the objections raised by the director. The director stated in his decision that the beneficiary's duties, as described, were identical to and overlap those of the general manager, the marketing manager, the finance manager, and the administrative officer. On appeal, counsel admits that the duties are identical but claims that the general manager performs his duties both abroad and in the United States, whereas the beneficiary's duties would be performed only in the United States. Further, it is noted that the description of the U.S. company employee's duties dated November 12, 2002 is inconsistent with the company's organizational chart in that the latter doesn't show Wei Li as a manager or Rea Xu as an administrative officer as claimed. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the petitioner asserts that the beneficiary would 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. 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 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.