

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



D 7

File: WAC-04-114-51617 Office: CALIFORNIA SERVICE CENTER Date:

JUN 28 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, 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 filed this nonimmigrant petition seeking to extend the employment of its Vice President and CEO 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 California that operates as an importer of automobile parts. The petitioner claims that it is the subsidiary of Taiyuanshi Qingtian Passenger Transport Leasing Service Co., Ltd., located in Taiyuan City, China. The beneficiary was initially approved for L-1A status to open a new office in the United States, and Citizenship and Immigration Services (CIS) subsequently approved a petition to extend the beneficiary's status. The petitioner now seeks to again extend the beneficiary's stay.

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 beneficiary will be employed in a primarily managerial and executive capacity. In support of this assertion, counsel submits a brief, additional evidence, previously provided documents, and a copy of an unpublished AAO decision.

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 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.

In a letter filed with the initial petition on March 15, 2004, the petitioner described the beneficiary's job duties as follows:

[The beneficiary] has be [sic] responsible for the [petitioner's] entire operation including marketing, distribution, finance and accounting, budgeting and cost control, business development, and administrative. [The beneficiary's] primary responsibilities have been involved in aggressively establishing and developing the [petitioner]. Thus, she has been engaged mainly in business expansion and organizational aspects of the company, establishing commitments with U.S. companies, developing the company's image/presence in the U.S. market, and supervising the company's advertising and personnel functions. [The beneficiary] has been instrumental in [the petitioner's] purchase of [its auto parts subsidiary].

In her capacity as CFO, [the beneficiary] has been granted total autonomy and decision-making discretion with regards to all financial operations of the [petitioner], including supervision of personnel through planning, directing, and coordinating the activities of employees. She ensures goals and objectives are accomplished within prescribed time frames and budget limitations. She has been responsible for directing and coordinating U.S. company operations to achieve maximum efficiency, economy of cost, and optimum profit.

The Beneficiary is also charged with devising, implementing, and administering the financial plans and policies of the company.

On March 19, 2004, the director requested additional evidence. Specifically, the director instructed the petitioner as follows:

Submit a more detailed description of the beneficiary's duties in the U.S.. Be specific. Indicate exactly whom the beneficiary directs including their job title and position description. List all employees under the beneficiary's direction. Also, indicate the percentage of time spent in each of the listed duties.

In a response dated March 29, 2004, the petitioner indicated that the beneficiary will direct the work of 12 employees in the United States, and she will indirectly oversee and coordinate the work of 23 outside sales representatives. The petitioner further described the beneficiary's duties as follows:

- Establish, implement and enforce goals and policies pertaining to marketing and operations;
- Develop, execute and supervise marketing strategies;
- Develop the company's image/presence in the U.S. market,
- Manage recruiting, training, retention, evaluation and termination of employees;
- Devise, implement, and administer the financial plans and policies of the company;
- Review financial and accounting information to ensure agreement with goals;
- Periodically assess business plans and policy to ensure continued profitability;
- Set long-range plans and organization mission; and
- Prepare and oversee annual operating budget,

The percentage of Beneficiary's time for each task is broken down as follows:

- Operations Management (e.g. creating, revising, implementing goals and policies of the company) – 40%
- Marketing Management (e.g. developing marketing plans, customer service and maintenance) – 40%
- Human Resource Management (e.g. recruiting and dismissal of employees, training and supervision) – 20%

On April 1, 2004, the director denied the petition. The director determined that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. The director stated that "it appears that the beneficiary has been and/or will be performing many aspects of the day-to-day operations of the business." The director found that the petitioner failed to provide sufficient detail regarding the beneficiary's duties to establish that the majority of her time will be devoted to managerial or executive tasks. The director noted that the petitioner's quarterly report for the fourth quarter of 2003 shows that it employed four employees in addition to the beneficiary during the covered period. The director stated that the petitioner "does not possess the organizational complexity to warrant having an executive."

The director concluded that "the petitioner's evidence is not persuasive in establishing that the beneficiary will be managing a subordinate staff of professional, managerial, or supervisory personnel who [will] relieve [her] from performing non-qualifying duties."

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a primarily managerial capacity. Counsel submits a brief in which he states the following:

[T]he point here . . . is not whether the job duties are sufficiently [sic] in details to establish the managerial nature of the job, but to determine whether the beneficiary has supervised other managers or professionals, thereby proving that the beneficiary has not been performing many aspects of the day-to-day operations of the business.

Counsel cites two unpublished AAO decisions to stand for the proposition that the sole employee of a petitioner can qualify as a manager or executive. Counsel claims that the director ignored the fact that the petitioner acquired a second business that employs more than seven individuals and 20 sales representatives. Counsel asserts that the beneficiary will supervise three managers employed by the petitioner, including an assistant manager, a sales manager, and a purchasing manager. Counsel further indicated that the beneficiary will oversee three managers and one supervisor employed by its acquired subsidiary, including a general manager, an office manager, and a vice general manager. Counsel discusses the facts of a third unpublished AAO decision, and states that "[i]n light of the reasoning of [the unpublished matter], . . . [CIS] has abused its discretionary authority in denying the petition by assuming that 1) the beneficiary spent most of her time performing nonmanagerial duties, 2) the beneficiary did not manage other managers and professionals."

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(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.*

In the instant matter, counsel asserts that the beneficiary will be employed in both a primarily managerial and executive capacity. To sustain such an assertion, the petitioner must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive duties under section 101(a)(44)(B) of the Act, and the statutory definition for managerial duties under section 101(a)(44)(A) of the Act. At a minimum, the petitioner must establish that the beneficiary is primarily employed in one or the other capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

However, the job descriptions submitted by the petitioner are brief and vague, providing little insight into the true nature of the tasks the beneficiary will perform in the United States. For example, the petitioner stated that the beneficiary "has been engaged mainly in business expansion and organizational aspects of the company, establishing commitments with U.S. companies, developing the company's image/presence in the U.S. market, and supervising the company's advertising and personnel functions." Yet, this broad statement does not indicate what tasks the beneficiary will perform on a daily basis. The petitioner provided that the beneficiary "has been granted total autonomy and decision-making discretion with regards to all financial

operations of the [petitioner]," yet this statement fails to specify what associated tasks the beneficiary will perform. The petitioner stated that the beneficiary "has been responsible for directing and coordinating U.S. company operations to achieve maximum efficiency, economy of cost, and optimum profit." However, this general assertion fails to describe any of the beneficiary's actual duties. The petitioner stated that the beneficiary will "[e]stablish, implement and enforce goals and policies pertaining to marketing and operations," "[d]evelop, execute and supervise marketing strategies," and "[d]evelop the company's image/presence in the U.S. market." Yet, in the absence of further explanation, the petitioner has failed to show that these are managerial duties rather than non-qualifying marketing and sales tasks. 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 actual duties themselves reveal the true nature of the employment. *Id.*

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 petitioner provided a breakdown of the percentage of time the beneficiary will devote to her respect duties. However, the categories of tasks are described in too general of terms to establish that they are in fact managerial or executive duties. For example, the petitioner indicated that the beneficiary will devote 40 percent of her time to "Operations Management (e.g. creating, revising, implementing goals and policies of the company)." Yet, this statement fails to identify the beneficiary's specific daily duties. The petitioner stated that the beneficiary will commit 40 percent of her time to "Marketing Management (e.g. developing marketing plans, customer service and maintenance)." Yet, as discussed above, the petitioner has failed to adequately define the beneficiary's marketing duties such to show that they are managerial or executive in nature. Accordingly, as much as 80 percent of the beneficiary's time has not been shown to be devoted to managerial or executive tasks. *See* 8 C.F.R. § 214.2(l)(3)(ii).

Counsel states that the emphasis of this proceeding should be on "whether the beneficiary has supervised other managers or professionals," not whether the petitioner has provided sufficient details of the beneficiary's duties. However, as indicated by the director, the beneficiary's duties are at issue in this proceeding. The petitioner has the burden of proof to establish that the beneficiary will be employed in a primarily managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii); section 291 of the Act, 8 U.S.C. § 1361. Assessing whether the beneficiary supervises managerial or professional subordinates is but one factor in determining the beneficiary's employment capacity. Section 101(a)(44)(A)(ii) of the Act. The petitioner must provide sufficient evidence to show that the beneficiary's duties meet each of the criteria listed in section 101(a)(44)(A) of the Act. To that end, 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. at 1103. The director appropriately examined the level of detail the petitioner provided in describing the beneficiary's duties.

Nevertheless, the beneficiary's subordinates are an important consideration in this proceeding. The petitioner claims that the beneficiary will oversee subordinates that are managerial and supervisory employees. The petitioner explains that the beneficiary will have oversight authority over the employees of its purchased subsidiary company. However, while the evidence of record supports that the petitioner owns a 70 percent interest in its subsidiary, the petitioner has not clearly described the beneficiary's daily interaction with the employees of the subsidiary. The subsidiary has another employee in the position of president, and it is presumed that this employee also exercises significant oversight of the subsidiary's employees and operations. From the documentation presented, it is unclear whether the beneficiary in fact supervises the employees of the subsidiary. 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)).

The evidence of record shows that the beneficiary supervises an assistant manager, a sales manager, a purchasing manager, a clerk, and the president of the petitioner's subsidiary. Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) 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).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a 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 provided the level of education obtained by the beneficiary's subordinates. Nor has the petitioner shown that at least a bachelor's degree is required for their respective duties. Thus, the petitioner has failed to establish that the beneficiary's subordinates are professionals.

While three of the beneficiary's subordinates have managerial titles, the petitioner has not sufficiently described their duties such to show that they manage a clearly defined department or function of the petitioner. The fact that they possess managerial titles does not serve as prima facie evidence that they are managers. Again, the actual duties of a position reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1103. Nor has the petitioner shown that its managers are supervisors. While the petitioner's organizational chart reflects that the assistant manager has authority over the clerk, the description of the assistant manager's duties does not describe any supervisory tasks. Thus, the petitioner has failed to

show that the assistant manager, the sales manager, the purchasing manager, or the clerk are supervisory, professional, or managerial, as contemplated by section 101(a)(44)(A)(ii) of the Act.

The president of the petitioner's subsidiary appears to be both a managerial and supervisory employee. Thus, the evidence of record shows that the beneficiary has one managerial and supervisory subordinate. However, the petitioner states that the beneficiary will devote 20 percent of her time to "Human Resource Management (e.g. recruiting and dismissal of employees, training and supervision)." As the beneficiary will directly supervise five subordinates, it is clear that a fraction of this portion of her time will be devoted to supervising the subsidiary's president. The fact that the beneficiary will oversee the president less than 20 percent of the time does not show that she will be engaged with managerial or executive duties for a majority of her time. As discussed above, the duties comprising the majority of the beneficiary's time have not been shown to be managerial or executive in nature.

Counsel cites two unpublished AAO decisions to stand for the proposition that the sole employee of a petitioner can qualify as a manager or executive. Counsel discusses the facts of a third unpublished AAO decision, and states that "[i]n light of the reasoning of [the unpublished matter], . . . [CIS] has abused its discretionary authority in denying the petition by assuming that 1) the beneficiary spent most of her time performing nonmanagerial duties, 2) the beneficiary did not manage other managers and professionals." However, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the cited matters. Counsel's conclusory statement that the reasoning in the third cited matter renders the director's decision an abuse of discretion is not persuasive. Again, 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. at 165. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. The cited decisions will not be considered in this proceeding.

Based on the foregoing, 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(1)(3)(ii). For this reason, the appeal will be dismissed.

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.