

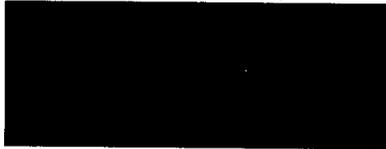
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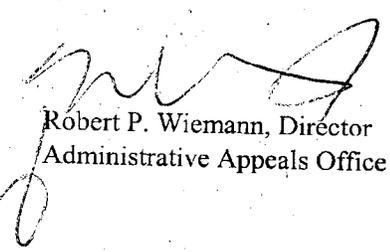
IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

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 seeks to employ the beneficiary temporarily in the United States 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 U.S. petitioner, a limited liability company organized in the State of California that is engaged in the distribution of adhesive films, seeks to employ the beneficiary as its business and sales manager. The petitioner claims that it is the subsidiary of [REDACTED] located in Frontignan, France.

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, the petitioner asserts that the director's denial was based on a misinterpretation of both law and fact, and that the evidence submitted with the initial petition and in response to the director's request for additional evidence clearly established that the beneficiary would be employed in a primarily managerial or executive capacity as defined by the regulations. In support of this assertion, the petitioner submits a brief and additional evidence.

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 primary issue in this 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 the initial petition, the petitioner stated that "[the beneficiary's] mission in the United States will be to develop [the petitioner's] penetration on the east coast. For that purpose, he will work half of his time at the petitioner's premises in Corona, California, and the other half out of New York." The petitioner continued,

stating that “[h]is duty will be to build up a client list and to hire the necessary personnel in order to assist him within the framework of his mission. It is expected that the sales and administrative team for the east coast will grow from 1 to 3 persons within the next 18 months.”

On June 25, 2003, the director requested additional evidence establishing that the beneficiary was qualified for the benefit sought. Specifically, the director requested: (1) the total number of employees at the location where the beneficiary would be employed; (2) a copy of the organizational chart for the U.S. entity which demonstrated the beneficiary’s rank within the organizational hierarchy and details about the beneficiary’s subordinates, their positions, and their salaries; (3) corporate documentation for the U.S. entity, including the company’s stock ledger and stock certificates; and (4) a copy of the U.S. entity’s lease agreement.

On July 22, 2003, the petitioner submitted a detailed response accompanied by the documentation requested by the director. Counsel’s response included an organizational chart evidencing that the beneficiary would not be supervising any employees in his proposed position.

On September 12, 2003 the director denied the petition. The director determined that the evidence in the record did not establish that the beneficiary would be employed in a primarily managerial or executive capacity while in the United States. Specifically, the director concluded that the evidence submitted was insufficient to demonstrate that the beneficiary would be functioning in a primarily managerial capacity, as there was no evidence that the beneficiary would be exercising significant authority over generalized policy of the organization. The director further found that the U.S. petitioner lacked the organizational complexity to support the beneficiary in a position that is primarily managerial or executive.

On appeal, the petitioner alleges that the director’s denial was the result of a misinterpretation of both law and fact, and that the evidence submitted clearly established the beneficiary’s qualifications.

The AAO, upon review of the record of proceeding, concurs with the director’s findings. Specifically, upon review of the beneficiary’s stated duties and his anticipated role in the organizational hierarchy of the U.S. entity, it appears that the beneficiary will not be acting in a primarily 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(I)(3)(ii). As previously noted, the petitioner provided a brief description of the beneficiary’s proposed duties with the initial petition, and essentially indicated that his duties would consist primarily of penetrating the east coast market. Associated duties would include finding new clients and providing monthly reports to both the U.S. and foreign entities. The petitioner further stated that although the beneficiary would not initially supervise personnel, it was likely that he would hire new employees for the New York office who would then be under his direction within 18 months.

On appeal, the petitioner alleges that the beneficiary’s duties are both managerial and executive in nature, and further elaborates on his stated duties. Specifically, the petitioner states that:

It appears clearly to us that [the beneficiary] will:

- Manage a component or subdivision of the organization as he will manage an entirely new office;
- [M]anage an essential function within the organization, or a department or subdivision of the organization as being responsible of an entirely new office is an essential function;
- [H]ave the authority to hire and fire employees when the New York office will be sufficiently well established to do so;
- [A]s long as no other employee will be directly supervised, he will function at a senior level within the organizational hierarchy or with respect to the function managed as he will report only to [the foreign entity] and to the President of [the petitioner];
- Exercise discretion over the day-to-day operations of the activity of the New York office.

The petitioner concludes by stating that the beneficiary “will effectively act as a manager as provided in 8 CFR 214.2(l).” After presenting this conclusion, the petitioner continued its assertions as follows:

Furthermore, it appears that [the beneficiary] will:

- Direct the management of a major component of the organization (as he will direct the management of an entire local office in New York);
- Establish the goals and policies of the organization, component, or function (as he will be the only person to establish the goals and policies of the New York office);
- Exercise wide latitude in discretionary decision-making (as he will have total latitude in discretionary decision-making for the New York office);
- Receive only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization (as he will only receive general supervision [from] the French parent company and/or the President of [the petitioner]).

The petitioner subsequently concludes this recitation by stating that “[a]s a consequence, we believe that [the beneficiary] will effectively act as an executive as provided in 8 CFR 214.2(l).” Finally, the petitioner combines these duties into a single list as evidence of the beneficiary’s qualifications.

The AAO is not persuaded that the proposed duties of the beneficiary satisfy the regulatory requirements. In addition, the statements provided by the petitioner on appeal are not convincing.

There are several problems with the beneficiary’s stated duties and the petitioner’s assertions in support thereof. First, the statements provided on appeal essentially restate the regulatory definitions of both managerial and executive capacity, and are not supported by independent evidence. Instead, the petitioner merely restates the definitions and concludes by stating that “we believe” the beneficiary is qualified. This form of evidence is not persuasive in this matter. Conclusory assertions regarding the beneficiary’s

employment capacity are not sufficient. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). In addition, the petitioner has provided no independent documentation, aside from its own claims and conclusions, that support the assertions that the beneficiary will be employed primarily as a manager or executive. 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).

Second, the description of duties provided does not establish that the beneficiary will be employed primarily as a manager or executive. In this case, the petitioner indicates that the beneficiary will not be supervising personnel. Consequently, the AAO must examine the stated duties to determine whether the beneficiary can thus be classified as a function manager. 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.

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 quantify the time the beneficiary spends on them. For example, the petitioner repeatedly states that the beneficiary will work alone in the New York office. Without a support staff to manage clerical and administrative tasks essential for the operation of a business, it is evident that the beneficiary will be performing these duties. For example, the petitioner indicates that the beneficiary will be solely responsible for the sales functions of the business, in addition to finding new clients, until (or unless) additional employees are hired. Additionally, the AAO notes that the beneficiary is also expected to devote half of his time to service in the petitioner's West Coast office. However, the petitioner fails to discuss what the beneficiary's stated duties would be while working in that office. Clearly, this statement suggests that the beneficiary will be required to perform a significant amount of non-managerial duties that do not fall directly under traditional managerial duties as defined in the statute.<sup>1</sup> For this reason, the AAO cannot determine whether the beneficiary is primarily

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<sup>1</sup> Assuming the accuracy of the petitioner's claim that the beneficiary is to be the only employee in the New York office, it is impossible to conclude that the beneficiary will be employed primarily in a managerial or

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).

To allow the broad application of the term "essential function" to include any minor or low-level function within a business would render the term meaningless. The term "essential" is defined as "inherent" or "indispensable." *Webster's II New College Dictionary* 384 (2001). Accordingly, the petitioner must establish that the function is inherent and indispensable to the business rather than a low-level collateral task that is superfluous to the company's essential operations. Since the petitioner has not described the daily tasks of the beneficiary with specificity, and there is no evidence to suggest that the beneficiary will not be expected to engage in low-level tasks while working alone to create a new office, the AAO is precluded from finding that the beneficiary will be employed in a primarily managerial or executive capacity.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the record contains insufficient evidence that a qualifying relationship exists between the U.S. entity and the claimed foreign parent. The record alleges that the U.S. entity is a subsidiary of [REDACTED] a French corporation. The corporate documentation evidencing the ownership of the U.S. entity, however, is limited and not persuasive. The record contains a Membership Interest Transfer Ledger, affirmed as of July 11, 2003, and a copy of the U.S. petitioner's Articles of Organization. Although both documents indicate that the foreign entity is the majority shareholder, the extent of the membership interests differs on each document. Furthermore, there are no membership certificates or ledgers to support these contentions. 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). 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).

A final note is with regard to the untranslated documents contained in the record. Numerous documents, written in French, are submitted in support of various claims. Although the petitioner submits certified statements attesting to the nature of the documents, the AAO is precluded from fully examining the evidence due to the failure to submit a certified translation of the documents in their entirety. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

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executive capacity if there is no one else to conduct the basic functions of the New York office while he is working in the petitioner's West Coast office.

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.