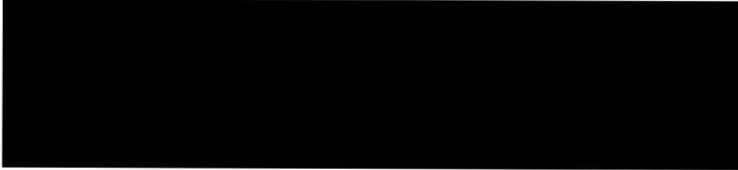


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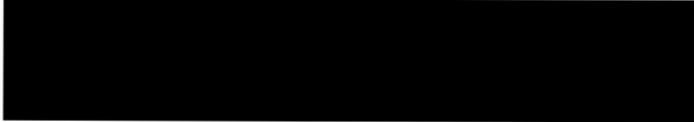
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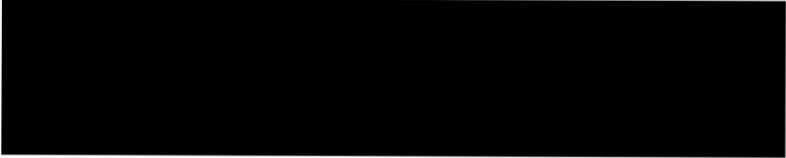
File: WAC 04 036 52950 Office: CALIFORNIA SERVICE CENTER Date: **APR 03 2006**

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, Vermont 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 employ the beneficiary as its managing director as an L-1A nonimmigrant intracompany transferee to open a new office 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 California corporation and claims to be the affiliate of [REDACTED] located in San Juan Manila, The Philippines. The petitioner plans to engage in the manufacture and sale of home furnishings.

The director denied the petition concluding that the petitioner did not establish that the beneficiary had been employed abroad in a primarily managerial or executive capacity.

The petitioner filed an appeal in response to the denial. On appeal, counsel for the petitioner asserts that the director's denial was erroneous because the director "did not consider that the beneficiary possesses and or will perform the duties primarily designated to the managerial or executive capacity." In support of this contention, counsel submits a brief with additional arguments.

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.

- (v) If the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:
 - (A) Sufficient physical premises to house the new office have been secured;
 - (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
 - (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The primary issue in this matter is whether the beneficiary has been employed by the foreign 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 an undated letter from the petitioner which was included with the initial petition, the petitioner stated the following regarding the beneficiary's qualifications:

[The beneficiary] is presently employed with this company as General Manager. He joined the organization in 1986 as Production Coordinator in charge of production, planning, control and materials inventory. After 2 years, he rose to the position of Production Manager responsible for supervising 150 employees in all functional areas, which included Carpentry, Sanding, Varnishing, Carving, Upholstery, and Finishing. In July 1989, after obtaining a degree in B.S. in Commerce (Management), from San Beda College, Manila, he was appointed as Company's General Manager responsible for the overall operations of the company.

The petitioner further stated that the beneficiary had been largely responsible for the foreign entity's sales growth and that he actively participated in business and civic projects.

The director was unsatisfied with the details of the beneficiary's foreign employment and consequently issued a request for evidence on May 20, 2004.¹ In the request, the director asked for a detailed overview of the beneficiary's duties abroad, including a copy of his payroll records to corroborate his employment as well as the number of employees abroad, their duties, and their job titles. In a response dated August 6, 2004,

¹ Prior to this request, the director had issued a request for additional evidence which pertained only to the U.S. employment of the beneficiary and the qualifying relationship between the petitioner and the foreign entity. Since the denial was not based on these issues, the AAO will not discuss this prior request for evidence.

counsel for the petitioner submitted the requested payroll records and repeated the previously submitted description of duties. With regard to the employees of the foreign entity working under the beneficiary's supervision, the petitioner provided the following list:

- | | | |
|-----|-----------------------------|---------------|
| 1. | Sales representative | -2 employees |
| 2. | Production Manager | -1 employee |
| 3. | Production Coordinator | -1 employee |
| 4. | Purchaser | -1 employee |
| 5. | Designing Department | -2 employees |
| 6. | Milling Department | -1 employee |
| 7. | Carpentry Department | -8 employees |
| 8. | Upholstery Department | -3 employees |
| 9. | Sanding and Finishing Dept. | -11 employees |
| 10. | Delivery Department | -2 employees |

With regard to the beneficiary's duties abroad the petitioner further stated:

[The beneficiary] play[s] [a] key role in selection, hiring, training and supervision of all personnel; work[s] closely with company owners and head[s] production department in manufacturing furniture; delegate[s] various projects to office and production staff; evaluate[s] [the] company's personnel as to their abilities and production; schedule[s] and track[s] production status from start to finish; supervise[s] the purchase and order of raw materials needed for production; increased production output by 50% to meet deadlines; inventory and quality control of products; oversee[s] and coordinate[s] work movement of all department[s]; suggest[s] new ways in order to improve the quality of the product, production work flow and customer care.

On August 30, 2004 the director denied the petition. The director found that the totality of the evidence in the record was insufficient to establish that the beneficiary would be primarily employed in a managerial or executive capacity. In addition, the director concluded that the current corporate structure of the foreign entity was such that the beneficiary was merely a first line supervisor of non-professional employees, and not a managerial employee who supervised a subordinate staff of professional, supervisory, or managerial employees. In addition, the director concluded that the actual duties of the beneficiary could not be determined from the minimal evidence contained in the record.

On appeal, counsel repeats his assertion that the petitioner has satisfied all regulatory requirements and introduces no new or independent evidence to establish the executive capacity of the beneficiary. Counsel merely restates its claims that the beneficiary has been working abroad in a managerial capacity and claims that this should be evident by virtue of the corporate documentation submitted for the foreign entity.

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(1)(3)(iv). 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 or involved specialized knowledge. *Id.*

The description of duties provided with the initial petition merely identified the three positions the beneficiary had held with the foreign entity since commencing his employment there in 1986. In this matter, however, it is only the beneficiary's most recent employment capacity that is relevant. *See* 8 C.F.R. §§ 214.2(l)(3)(iii) and (iv). In response to the director's request for additional evidence, the petitioner provided a list of subordinate employees, most of whom were tradesmen or laborers, and supplemented the beneficiary's description of duties by claiming that he worked closely with the production department, supervised the purchase and order of raw materials, and scheduled and tracked production status. This description did little to describe the beneficiary's actual duties, nor did it describe the nature of the beneficiary's day-to-day tasks. Instead, it merely provided a generic description of the nature of his duties, and at times merely paraphrased the regulatory definitions. The AAO, upon review of the record of proceeding, concurs with the director's finding that it is more likely than not that the beneficiary was not employed in either a primarily managerial or executive capacity. First, the petitioner failed to specifically articulate the nature of the beneficiary's duties. While the petitioner did identify the overall role of the beneficiary in the workplace, it failed to specifically discuss what the beneficiary did during an actual workday. 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 position description contained in the record did not articulate what a specific day in the role of the beneficiary would have consisted of. Instead, the descriptions merely provided a brief synopsis of the beneficiary's overall duties, e.g., he played "a key role in selection, hiring, training and supervision of all personnel" and he worked "closely with company owners and head[ed the] production department." It did not discuss or identify job-specific tasks or obligations the beneficiary would be required to perform.

The statements regarding the beneficiary's duties abroad failed to discuss the details of the beneficiary's actual duties, nor did they clarify how the beneficiary was acting in a primarily managerial or executive capacity. On appeal, counsel appears to basically equate managerial and executive capacity with the beneficiary's title of general manager, yet fails to provide solid examples of how this capacity was actually attained. 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. v. Sava*, at 1108; *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Furthermore, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, the record lacks evidence that the beneficiary oversaw a subordinate staff of professional employees. Although the beneficiary is not required to supervise personnel, if it is claimed that his 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.

Although the petitioner provided a lengthy list of subordinate employees, the majority of these employees are laborers, tradesmen, and/or sales persons who specialize in carpentry and the actual construction of the petitioner's furniture. Although two of the identified positions, namely, production manager and production coordinator, do not sound as if they are unskilled positions, the petitioner has not provided any evidence to establish that these employees possess or require an advanced degree, such that they could be classified as professionals. Nor has the petitioner shown that any of these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

The record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed abroad in a primarily managerial or executive capacity. The petitioner was notified of the deficiencies in the petition and was provided with an ample period of time in which to supplement the record. The petitioner, however, failed to provide enough detail with regard to the beneficiary's foreign employment and the nature of his relationship with his alleged subordinates, and thus has failed to satisfy its burden of proof in these proceedings. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). That is not the case in this matter. For this reason, the petition may not be approved.

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.