

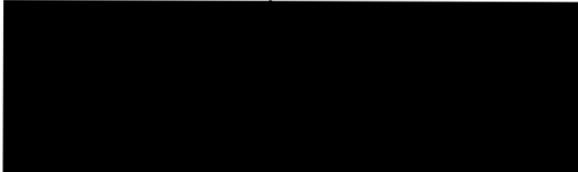
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U.S. Citizenship  
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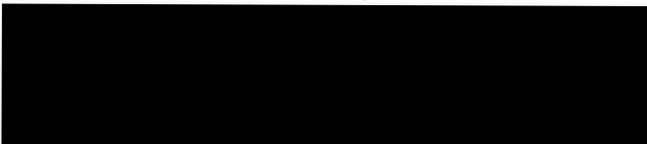
File: WAC 04 198 50807 Office: CALIFORNIA SERVICE CENTER Date: JUL 18 2006

IN RE: Petitioner:  
Beneficiary:



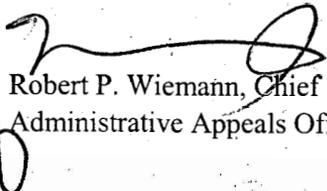
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Chief  
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 extend the temporary employment of the beneficiary as its construction manager 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 petitioner, a domestic corporation of the territory of Guam, claims to be engaged in wholesale, retail, and construction, and claims to be the subsidiary of [REDACTED] located in Manila, Philippines. The petitioner seeks to extend the beneficiary's stay for an additional three years.

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. On appeal, counsel for the petitioner alleges that the petitioner had satisfied its burden, and specifically states that "the Petitioner's construction division is managed by the Beneficiary. The division employs ten (10) employees including a business manager and office manager. Contrary to the denial decision, the duties of the beneficiary were described with particularity." Additionally documentary evidence is submitted in support of this contention.

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 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 a letter from the petitioner dated June 23, 2004, the petitioner stated that the beneficiary's position is a management position. In addition, the petitioner submitted a job description of the beneficiary's position, which stated as follows:

#### CONSTRUCTION MANAGER

Manages all construction aspects of business engaged in retail, wholesale, construction and related services. Directly supervises project managers and engineers. Primarily directs, supervises and controls the work of all subordinate supervisory, managerial, and professional employees. Exercises discretion in day to day operations of Guam Construction Division. Has the power to hire and fire employees or to recommend those as well as other personnel actions for all employees of the business:

The Construction Manager will:

Meet with major clients & promote business	10%
Meet with major suppliers and negotiate contracts	5%
Supervise work of supervisors, managers, and engineers	50%

Explore potential additional projects	5%
Manage all aspects of construction business	20%

The director found the initial evidence insufficient to satisfy the regulatory requirements. As a result, the director issued a request for evidence on July 22, 2004. The director requested additional information regarding the beneficiary's employment with the petitioner, such as the total numbers of employees retained by the petitioner; an organizational chart describing the petitioner's managerial hierarchy and staffing levels, including the names of all employees, their position titles, their job duties, their educational backgrounds, and their annual salaries or wages; a more specific description of the beneficiary's managerial duties; and the petitioner's quarterly wage reports and payroll summaries for the last eight quarters.

In a letter dated September 16, 2004, the petitioner responded to the director's request. The petitioner submitted an organizational chart for the petitioner, which demonstrated that the beneficiary was supervised by [REDACTED] the petitioner's general manager. With regard to the beneficiary's subordinates, the chart indicated that the beneficiary oversaw the following employees:

[REDACTED] Business Manager  
[REDACTED] Office Manager  
[REDACTED] Secretary  
[REDACTED] Foreman

Numerous other positions, such as project managers, procurement, warehousing, and various laborer positions were listed as currently vacant. Payroll summaries and quarterly wage reports indicates that as of June 30, 2004, two days before the filing of the petition, only [REDACTED] Office Manager, and [REDACTED] Secretary, were employed in addition to the beneficiary and the general manager. The petitioner also submitted a brief description of the duties of these other employees, but failed to provide any additional information with regard to the nature of the beneficiary's managerial duties.

On October 21, 2004, the director denied the petition. The director found that the evidence in the record was insufficient to establish that the beneficiary would primarily be employed in a managerial or executive capacity. The director concluded that the record did not establish that the beneficiary would supervise a staff of subordinate professional, managerial, or supervisory employees, and further concluded that at the time of the time of filing, the petitioner did not supervise a staff of subordinate professional, managerial, or supervisory employees.

On appeal, counsel for the petitioner states that the evidence submitted in support of the petition was sufficient, and emphasizes the fact that the petitioner now employs ten persons. In support of this contention, a payroll summary for the month of October 2004 was submitted, evidencing that the petitioner currently employed six persons in addition to the staff it had on the payroll at the time of filing. Counsel also resubmits the initial position description for the beneficiary which was included with the initial petition.

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.*

Despite the specific requests of the director, the petitioner failed and/or refused to submit a more detailed description of the beneficiary's managerial duties.<sup>1</sup> The brief description of the beneficiary's duties, submitted with the initial petition, failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *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). Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. Counsel asserts that this description, which he resubmits on appeal, adequately described the beneficiary's duties. The AAO disagrees.

The generic overview of the beneficiary's duties, despite including a breakdown of the percentage of time devoted to each such duty, does not describe the nature of the beneficiary's day-to-day tasks as of July 2004, the time of the petition's filing. The AAO, therefore, concurs with the director's finding that the petitioner has not established that the beneficiary will be employed in either a primarily managerial or executive capacity. Despite the director's specific request for a detailed description of the beneficiary's managerial duties, the petitioner failed to directly respond to such a request. 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). Additionally, the minimal information provided with regard to the beneficiary's position failed to specifically articulate the nature of the beneficiary's duties, and merely focused on the key phrases contained in the regulatory definition of managerial capacity. 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, *aff'd*, 905 F.2d 41.

In this matter, the petitioner basically equates managerial and executive capacity with the beneficiary's title of construction manager, yet fails to provide solid examples of how this managerial or executive capacity is 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., 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.). The director clearly requested a more

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<sup>1</sup> The AAO notes that in the denial, the director contends that the petitioner never submitted a description of the beneficiary's duties beyond a general statement that claimed he was responsible for the management of the construction division. The AAO recognizes that the previous-cited position description and percentage of time devoted to each duty was in fact submitted with the initial petition but overlooked by the director. Nevertheless, for the reasons discussed above, this description was insufficient to establish that the beneficiary would be employed in a primarily managerial or executive capacity, and does not excuse the petitioner's failure to respond to the director's request for additional evidence with regard to this matter.

detailed description of the beneficiary's duties in the United States with specific emphasis on his alleged managerial capacity. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated, but failed to do so. Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

While the vague description of job duties for the petitioner essentially negates the claim that the beneficiary is functioning in a primarily managerial capacity, he might be eligible in the alternative if it could be shown that his position in the organizational hierarchy of the petitioner went beyond that of a first line supervisor. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, as is the case in this matter, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

In this matter, although the organizational chart indicated that the beneficiary oversaw four subordinate employees, namely, the office manager, the business manager, the secretary, and the foreman, the payroll records indicate that at the time of the filing of the petition, only the secretary and the office manager were on the petitioner's payroll. The record indicates that the office manager possesses a bachelor's degree in chemical engineering, and that the secretary has a bachelor's degree in education. Their duties, however, are described as being the general duties associated with each respective position. For example, the secretary is designated with responsibility for general office operations and procedures, such as typing and bookkeeping, whereas the office manager handles administrative tasks such as preparation of payrolls and requisition of supplies.

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). Although these employees possess advanced degrees, there is no evidence in the record to indicate that a bachelor's degree in chemical engineering is a prerequisite for the position of office manager. Similarly, there is no indication that a bachelor's degree in education is required to fulfill the duties of secretary at this company. Therefore, the petitioner has failed to establish that these employees could be classified as professionals. Nor has the petitioner shown that either 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.

On appeal, counsel for the petitioner relies on the growth in the petitioner's staff and the continuing expansion of the business in support of the beneficiary's managerial capacity. This reliance is misplaced. The petitioner

must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

For the reasons stated above, the petitioner has failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity. 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.