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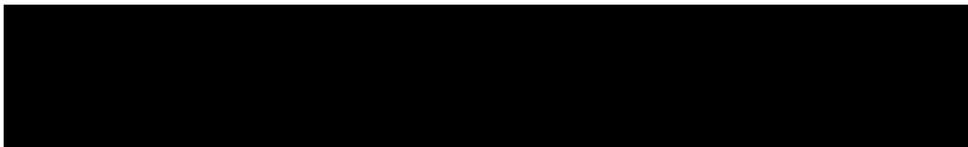
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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File: EAC 05 094 53555 Office: VERMONT SERVICE CENTER Date: **AUG 06 2007**

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, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant visa petition seeking to extend the employment of its project manager 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 allegedly engaged in the business of event management. The beneficiary was initially granted a three-year period of stay as an L-1B nonimmigrant intracompany transferee having specialized knowledge, and the petitioner now seeks to extend the beneficiary's stay as an L-1A nonimmigrant intracompany transferee employed primarily in a managerial capacity.

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 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 beneficiary is employed in a managerial capacity. Counsel to the petitioner also attached a letter requesting 45 days in which to file a brief or additional evidence. However, as of the date of this decision, no brief or evidence has ever been received in this matter, and the record shall be considered complete. Counsel did enclose with the Form I-290B a copy of the petitioner's IRS 2004 Form 1120 and a letter from the petitioner restating the beneficiary's qualifications.

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 the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial 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.

The petitioner included a job description for the beneficiary with the initial petition. As this job description, which lists 24 duties, is part of the record, it will not be reproduced here. Generally, the beneficiary is described as reporting to an executive vice president and as being engaged in administering "client projects, including their profitability, using staff and other resources to prepare, plan, organize and deliver conferences and events held throughout the USA and UK, and at international venue[s]."

On March 16, 2005, the director requested additional evidence. The director requested, *inter alia*, evidence that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory employees.

In response, the petitioner provided a memorandum summarizing the beneficiary's purported managerial role as follows:

[The beneficiary] currently manages within [the petitioner] one member of staff, who is *employed* in the position of project coordinator (job description attached). Additionally [the beneficiary] also manages 2 contracted staff, who work on permanent part-time basis, one in

the role of project coordinator, and one in the role of project executive (job description also attached). These two freelance/contract staff are [petitioner] staff to the extent that they have regular fixed working hours, and carry company cell phones, and business cards. Additionally [the beneficiary] manages temporary part-time contracted staff; up to six at any given time.

A significant part of [the beneficiary's] duties is to manage these additional permanent and temporary contract staff.

Additionally, because of the global nature of [the petitioner's] business, [the beneficiary] also has frequent, ongoing managerial responsibility for project coordinators and project executives while working on collaborative projects with our UK office ([the foreign entity]). [The beneficiary] therefore manages project teams across our two offices. This involves managing teams of project coordinators and executives, who are employed (by either our US or UK companies) and/or freelance/contracted, to manage global events, most frequently for European based events on behalf of US clients, or vice versa.

As indicated above, the petitioner also provided job descriptions for one of the independent contractors and the sole subordinate employee purportedly managed by the beneficiary. As these job descriptions are in the record, they will not be repeated here. Generally, the subordinate employee, identified as the "project coordinator," is described as providing administrative and clerical support related to the preparation, planning, organization, and delivery of conferences and events for the petitioner's clients.

Finally, the petitioner provided an organizational chart showing the beneficiary reporting to the executive vice president and supervising the project coordinator and the independent contractors, i.e., project executives.

On August 15, 2005, 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 capacity.

The petitioner subsequently filed an appeal. On appeal, the petitioner asserts that the beneficiary is employed in a managerial capacity.

Upon review, the petitioner'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 this matter, the petitioner clearly claims that the beneficiary is employed in a managerial capacity.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" capacity. In support of its petition, the petitioner has provided a description of the beneficiary's duties that fails to establish that the beneficiary will be performing managerial duties in the United States. To the contrary, many of the duties ascribed to the beneficiary appear to be non-qualifying

operational or administrative tasks which do not rise to the level of being managerial in nature. For example, the beneficiary is described as advising clients on venue choices, preparing budgets, assisting in the preparation of business plans, chasing down unpaid invoices, inspecting proposed sites, and negotiating rates with hotels and suppliers. Such tasks are non-qualifying administrative or operational tasks which do not rise to the level of being managerial duties. Since the petitioner did not reveal what percentage of the beneficiary's time is devoted to such non-qualifying tasks, it has not been established that she is "primarily" employed as a manager. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Equally important, the petitioner places significant emphasis on the beneficiary's role in administering projects in the United Kingdom and her alleged management of people employed outside of the United States. However, the record is devoid of any explanation as to what percentage of her time is devoted to rendering services to the foreign employer outside of the United States. This is vitally important because the beneficiary's rendering of services, even managerial services, to the foreign employer may not be used to qualify the beneficiary as an intracompany transferee under the Act. "Intracompany transferee" is defined as one who seeks to enter the United States temporarily in order to render his or her services to a qualifying organization in the United States. 8 C.F.R. § 214.2(l)(1)(ii)(A). Absent a complete and credible explanation regarding the beneficiary's duties in the United States, it cannot be confirmed that the beneficiary is "primarily" employed in a managerial capacity in the United States. 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). 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).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees. As explained in the organizational chart and job descriptions for the subordinate employee, the beneficiary appears to supervise one employee, a "project coordinator." This employee is described as providing administrative and clerical support to the petitioner in its delivery of event management services. The petitioner ascribes no supervisory or management duties to the "project coordinator." To the contrary, this employee appears to be performing the tasks necessary to produce a product or to provide a service. Moreover, the other staff members do not appear to be employed by the United States operation. As independent contractors, the beneficiary's supervision of them is a non-qualifying duty as a matter of law. See section 101(a)(44)(A)(ii); 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). In view of the above, the beneficiary would appear to be primarily a first-line supervisor of a non-professional employee, the provider of actual services, or a combination of both. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employee is a professional. 101(a)(44)(A)(iv) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, the petitioner has not established that the beneficiary will

manage a professional employee.¹ Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.²

It is appropriate for Citizenship and Immigration Services (CIS) to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g., Systronics Corp. v.*

¹In evaluating whether the beneficiary will manage 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, in fact, established that a bachelor's degree is actually necessary to perform the duties of the beneficiary's subordinate employee or to independent contractors.

²While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. 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. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., 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. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties will be managerial functions, if any, and what proportion will be non-managerial. Also, as explained above, the record establishes that the beneficiary will primarily be a first-line manager of a non-professional employee, will likely perform non-qualifying administrative and operational tasks, and will provide services to the foreign employer outside of the United States. Absent a clear and credible breakdown of the time spent by the beneficiary performing her duties in the United States, the AAO cannot determine what proportion of her duties will be managerial, nor can it deduce whether the beneficiary will primarily perform 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).

