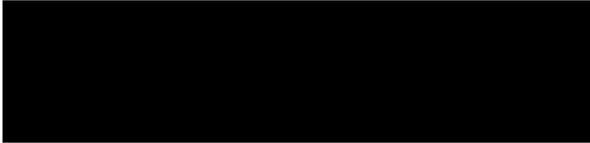




U.S. Citizenship  
and Immigration  
Services

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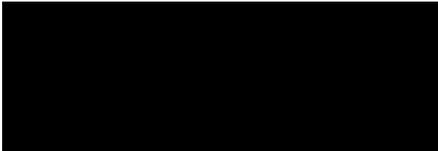
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File: SRC 04 143 50752 Office: TEXAS SERVICE CENTER Date: SEP 20 2007

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

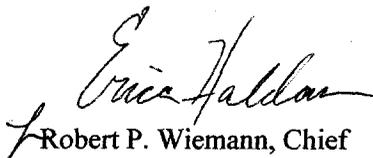
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



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, Texas 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 seeks to extend the temporary employment of the beneficiary as its vice president 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 corporation organized in the state of Florida, claims to be engaged in the business of importing towels and other textiles. It also claims to be the subsidiary of [REDACTED], located in Karachi, Pakistan. The beneficiary was initially granted a three-year period of stay and the petitioner now seeks to extend the beneficiary's stay.

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.

On appeal, counsel for the petitioner asserts that the director's decision was erroneous. In support of this contention, counsel submits a brief and additional evidence in support of the beneficiary's claimed eligibility.

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 a letter dated April 19, 2004, the petitioner provided the following description of the beneficiary's duties:

Direct and coordinate activities, staffing and training development, develop and establish new sales and marketing policies and objectives; review account report and financial sales, oversee[] implementation of import/export programs, represent the company at trade shows, meet with other executives and contract negotiations and other related matters.

The petitioner submitted a statement regarding its current staffing levels, and noted that the beneficiary would supervise an office assistant/secretary, an accounts payable/director, and two sales representatives/import clerks. The petitioner provided brief position descriptions for each employee and stated that all employees work 40 hours per week. However, according to the petitioner's Florida Forms UCT-6, Employer's Quarterly Report, the company's sales representatives earn only \$500 per month.

On April 30, 2004, the director issued a request for additional evidence. The director advised the petitioner that the evidence provided suggests that the beneficiary is a first-line supervisor of non-professional employees. The director provided the statutory definitions for managerial and executive capacity, and requested that the petitioner address the issues raised.

In a response dated May 24, 2004, the petitioner, through counsel, addressed the director's queries. With regard to the beneficiary's duties, the petitioner submitted an updated overview of the beneficiary's duties, which stated:

[The beneficiary] is under direct supervision of the director of the parent company. He is employed in the executive capacity and manages a division of the parent company in the United States. [H]e supervises, controls and oversees the incoming orders from the wholesalers through the local sales representatives and coordinates with the overseas manufacturing department to ensure the quality of product being exported. . . . [The beneficiary] also supervises and oversees the quality of service to our local customers ([w]holesalers, [d]istributors, and [r]etailers).

[The beneficiary] has a managerial position and has absolute authority to hire/fire other employees/personnel. He directly supervises the personnel in our South Florida Division and looks over the products of local managers, in addition to exercising complete discretion of daily operations of imports and the distribution of products to the various parts of the country.

Each year, [the beneficiary] set[s] the goals of the company and delegates and assigns the duties to achieve such goals of marketing and sales through the local staff. He meets with the executives/managers of the prospective buyers' organizations to oversee the smooth flow of merchandise to them and keep periodic checks by meeting counterpart executive managers. [The beneficiary] is under direct supervision of the Director Parent Company. . . .

On June 8, 2004, the director denied the petition. The director determined that the evidence in the record did not establish that the beneficiary was employed in a primarily managerial or executive capacity in the United States. Specifically, the director found that although the beneficiary was part of a five person organization, he seemed to be supervising non-managerial, non-professional employees, and therefore was not employed in a primarily managerial or executive capacity as required by the regulations. On appeal, the petitioner contends that the director's decision was erroneous.

The AAO, upon review of the record of proceeding, concurs with the director's finding. While the beneficiary is the intended vice president of the company, there is insufficient evidence to show that he will be acting primarily in a managerial or executive capacity during his U.S. employment. 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). In this case, the description of duties provided in the initial letter of support, as well as those listed in the response to the request for evidence, failed to sufficiently document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The AAO notes that the petitioner identified several duties, such as "attending trade shows" and "meeting with the executives/managers of the prospective buyers' organizations" which are duties not traditionally considered to be managerial or executive in nature. The petitioner fails to quantify the exact amount of time the beneficiary spends on each particular duty identified within these areas. Since the description of the beneficiary's duties includes both managerial and administrative or operational tasks, this omission is important, for the AAO cannot determine what an average day or week consists of for the beneficiary.

Furthermore, the general overview of duties provided in both the initial letter of support and the response to the request for evidence seems to merely paraphrase key areas from the regulatory definitions of managerial and executive capacity. See §§ 101(a)(44)(A) & (B) of the Act. 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). Without a more detailed discussion of the specifics surrounding the nature of the beneficiary's duties, it is impossible to conclude whether the beneficiary is employed in a primarily managerial or executive capacity. 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. The petitioner has 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. *Id.* at 1108.

Based on the description provided, it appears that the beneficiary's duties include sales and marketing tasks, such as acting as a liaison between the petitioner and distributors. Generally, the performance of marketing and sales-related tasks, including attendance at trade shows, is not considered to fit the parameters of managerial or executive capacity. Furthermore, since the record claims that the petitioner employs an office assistant/secretary, two sales representatives/import clerks, and an accounts payable employee/director, it is unclear why the beneficiary's duties include such non-qualifying tasks as performing customer-related services. 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 §§ 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

The petitioner also indicates in the record that the beneficiary's job duties include overseeing the petitioner's four other employees. Although the beneficiary is not required to supervise personnel, if it is claimed that his or her

managerial 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.

The petitioner did not provide the level of education required to perform the duties of its sales associates, its secretary, or its "director." Even if the record demonstrated that these persons possessed a bachelor's degree, there is no verification that such a degree is actually a prerequisite to performing the duties of these positions. The AAO must focus on the level of education required by the position, rather than the degree held by 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. Thus, the petitioner has not established that these employees require a bachelor's degree to perform their duties, 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.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, Citizenship and Immigration Services (CIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

At the time of filing, the petitioner was a seven-year-old import and export company that claimed to have a gross annual income in excess of \$600,000. The firm employed the beneficiary as vice-president, plus an office assistant/secretary, an accounts payable/director, and two sales representatives/import clerks. The AAO notes that despite the petitioner's claims that employees work 40 hours per week, the evidence contained in the record does not substantiate this claim. The petitioner did not submit evidence that it employed any subordinate staff members who would perform the actual day-to-day, non-managerial operations of the company, and specifically indicates that the beneficiary's duties include customer-related services. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as vice-president and the four subordinate employees identified above. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

The petitioner has failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. For this reason, the petition 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.