U.S. Department of Homeland Security
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Washington, DC 20529

D-7

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 265 50752 Office: CALIFORNIA SERVICE CENTER Date: JUN 23 2004

IN RE: Petitioner: [redacted]
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)

ON BEHALF OF PETITIONER:

[redacted]

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 is engaged in the business of operating dental laboratories. It seeks authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity. On appeal, counsel disputes the director's findings and submits a brief in support of his assertions.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulations at 8 C.F.R. § 214.2(l)(3) state 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.

The U.S. petitioner states that it was established in September of 2000 and claims to be a subsidiary of Koga Enterprises, Co., Ltd, located in Japan. The record shows that the petitioner in the instant case had previously filed a separate petition on behalf of the same beneficiary. The petitioner indicates that upon CIS's denial of the petition to extend the validity of the previously approved petition, the petitioner opted to file a new petition, which is the subject of the present case. The petitioner seeks to employ the beneficiary in the United States for an additional three years at an annual salary of $48,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in a managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

> The term "managerial capacity" means 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), provides:

> The term "executive capacity" means 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
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> iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In support of the petition, the petitioner provided a description of the beneficiary's job duties. As that description has been incorporated in the denial in its entirety, it need not be repeated in this discussion.

In addition to the description of the beneficiary's job duties, the petitioner also submitted a copy of its organizational chart, which indicates that the beneficiary supervises a client administrative manager, a quality assurance manager, and a dental lab that employs 700 people.

On September 4, 2002, the director issued a request for additional evidence instructing the petitioner to provide a copy of its organizational chart clearly identifying the beneficiary and the names and job titles of all

the employees under the beneficiary's supervision. The petitioner was also asked to provide brief job descriptions, educational levels, and salaries for its employees.

The petitioner complied with the director's request for evidence by submitting another organizational chart listing the same two subordinates listed in the previously submitted chart. The petitioner included their respective salaries and, in a separate statement, provided their job descriptions and educational levels.

Nevertheless, the director denied the petition concluding that the description of the beneficiary's duties was too broad and that the petitioner failed to establish that the beneficiary would be primarily performing managerial or executive duties.

On appeal, counsel provides the following additional description of the beneficiary's duties:

> Duties involving significant authority over the generalized policy of [the U.S. petitioner]:
>
> - Participates in the general meeting of [the foreign entity] to report the business operation, sales goals, and other issues of [the petitioner].
> - Plans and develops policies and objectives of [the petitioner] . . . .
> - Establish policy requirements for purchasing programs, e.g. vendor selection, pricing, preparation of contract specifications and technical studies.
> - Oversees the development of new products while implementing effective and efficient quality control system.
> - Exercises a high-degree of decision making to create a more efficient and profitable organization while monitoring the service oriented base . . . .
> - Oversees the operation of Modern Dental Lab, Inc. in Hong Kong . . . .
>
> Job duties in administrative issues:
>
> - Hires, fires and trains employees. In addition, delegates assignments and conducts performance review of employees including his subordinate managers.
> - Reviews recommendations from his subordinates and approves changes in management procedures, information network systems, budgetary limitation and organizational procedures.
>
> Job duties in financial and marketing issues:
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> - Oversees the development of marketing programs to expand the business.
> - Approves budgets on each projects [sic] prepared by his subordinates and oversees the projects, which include production of marketing materials and purchasing

machines and equipments in order to produce the most advanced products and sell the technique and products to dental offices to expand the company's clientele.

- Reviews weekly sales reports, financial statements, weekly ledgers, and annual balance sheets to ensure the financial position of the company and is responsible for transfer of the company funds.

Although the above description suggests that the beneficiary maintains a high degree of discretionary authority over the business direction and daily operation of the petitioning entity, it fails to convey an understanding of what the beneficiary actually does on a daily basis. A majority of the above duties indicate that a significant portion of the beneficiary's job is overseeing and directing the work of others. For instance, the petitioner states that the beneficiary oversees the development of marketing programs. Similarly, the position description of the beneficiary's immediate subordinate, the client administrative manager, indicates that she directs marketing. However, neither of the client administrative manager's subordinates is assigned any marketing-related tasks. Therefore, the petitioner leaves unanswered the question of who actually does the marketing. Furthermore, merely claiming that the beneficiary "oversees" the development of products does not give an adequate description of the specific duties involved in the oversight. There are also no specific duties associated with the beneficiary's oversight of 700 employees that work for a separate company that is located on a different continent, thousands of miles away from the petitioner. 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 actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava, supra* at 1108. In the instant case, the petitioner failed to provide the necessary specifics regarding the beneficiary's job duties.

On review, the record does not establish that a majority of the beneficiary's duties have been or will be primarily directing the management of the organization. Although the petitioner has submitted several descriptions of the beneficiary's job duties, these descriptions lack sufficient detail that would allow the AAO to understand what the beneficiary does on a daily basis, and how much time he spends performing some of those duties. The petitioner has not demonstrated that it employs a sufficient staff to relieve the beneficiary from performing non-qualifying duties. Although the organizational chart previously submitted lists a number of subordinates under the beneficiary's position, the petitioner has not submitted any documentary evidence to support this claim, particularly the claim that it has contracted a foreign company to provide certain services. 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). Furthermore, the petitioner has not demonstrated that it has reached or will reach a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis. Nor does the record demonstrate that the beneficiary primarily manages an essential function of the organization. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying 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.

ORDER: The appeal is dismissed.