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

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 271 53031 Office: CALIFORNIA SERVICE CENTER Date:

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

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 filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of California that is engaged in the import and sale of motorcycles. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer, located in Taipei Hsien, Taiwan. The petitioner now seeks to employ the beneficiary as its general manager for three years.

The director denied the petition concluding that the petitioner had failed to establish that the beneficiary would be employed by the petitioning organization in a primarily managerial or executive capacity.

Counsel 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, counsel submits a letter from the petitioner, in which the petitioner claims that it has satisfied all regulatory criteria for establishing the beneficiary's proposed employment in a managerial capacity and executive capacity.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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.
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> (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.
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> (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.
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> (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 issue in the present proceeding is whether the beneficiary would be employed by the U.S. entity in a primarily 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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

(iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Counsel filed the nonimmigrant petition on September 4, 2002. In the accompanying documentation, counsel provided a letter from the petitioner, dated August 30, 2002, in which the petitioner stated that the beneficiary's job responsibilities as its general manager would be managing the petitioner's administrative, business and trading operations. The petitioner also provided the following:

> [The beneficiary's] executive duties will include formulating the subsidiary's overall administrative and business operation policies and decisions in compliance with local corporate laws and regulations. Overseeing and coordinating administrative, purchasing and import/export transactions with the parent company, US suppliers and other business entities; formulating the subsidiary's administrative and business development plans and strategies; and directing [the] establishment of trading and administrative systems, procedures and policies. In addition, [the beneficiary] will be directing the corporate business promotion and

> public relations arrangements. He will also be networking with local American advertising businesses, suppliers and trade associations for business opportunities; and [will] ensure proper implementation of [the] parent company's general business policies at the subsidiary. Administratively, [the beneficiary] will organize board meetings and direct proper record keeping and administration of the corporation. Finally, [the beneficiary] will supervise corporate personnel recruitment efforts regarding hiring and promoting local employees for the operations within the organization.

Counsel submitted the petitioner's organizational chart which identified the beneficiary as the general manager and chief financial officer. The chart also identified five employees subordinate to the beneficiary, including an import department manager, an import representative, a supply and sales department manager, and two marketing representatives. The import department manager was also identified as handling the role of corporate secretary. In addition, counsel submitted job descriptions for the U.S. employees.

In a request for evidence dated September 13, 2002, the director asked that the petitioner submit the following documentation to demonstrate the beneficiary's proposed employment in a qualifying capacity: (1) a detailed U.S. organizational chart clearly identifying the beneficiary's position and all subordinates by name and job title, and describing the job duties performed by each employee, their educational level, and annual salary; (2) certified copies of Form 1120, U.S. Corporation Income Tax Return, for years 1999 and 2000; and (3) copies of the petitioner's payroll summary and Forms W-2 and W-3 for the last three years.

In response, counsel submitted a letter from the petitioner, in which the petitioner explained that the need to employ the beneficiary as general manager stems from its increase in business activities, staffing levels and interactions with foreign companies, and from its growth in sales. The petitioner further explained that the beneficiary is qualified for the position of general manager as a result of his educational background, his "intimate knowledge" of the multinational business, and his managerial success in the foreign company and its other subsidiary in China. Counsel submitted a more detailed organizational chart and again provided a description of each subordinate's job duties. In addition, counsel submitted the requested employee records, quarterly tax returns, and federal corporate tax returns.

The director subsequently issued a second request for evidence dated October 26, 2002. In this request, the director asked that the petitioner provide copies of Form I-9, Employment Eligibility Verification, for all employees and copies of the petitioner's payroll summary, Forms W-2 and W-3 for the year 1999, employee transcripts and verification of any advanced degrees.

Counsel responded in a letter dated December 11, 2002, and submitted all requested documentation. Counsel also provided affidavits from two of the beneficiary's subordinate employees attesting to their completion of a college curriculum and their receipt of a bachelor's degree. In the affidavits, the employees explained that their diplomas and transcripts could not be located, as they had completed college more than twenty years ago. A copy of a diploma in business administration was submitted for the third subordinate manager.

In his decision dated December 20, 2002, the director concluded that the petitioner had not demonstrated that the beneficiary would be performing primarily managerial or executive job duties in the U.S. entity. The director stated that it appeared instead that the beneficiary would be directly providing the services of the petitioner's business. The director noted that the petitioner did not provide a comprehensive description of the beneficiary's job duties as to demonstrate the beneficiary's management of the organization, department, subdivision, function, or component of the company, nor did the petitioner establish that the beneficiary

would be managing professional, managerial, or supervisory personnel who would relieve the beneficiary from performing non-qualifying job duties. The director therefore concluded that the beneficiary would not be functioning at a senior level within the petitioner's organizational hierarchy. Accordingly, the director denied the petition.

On appeal, the petitioner states in its January 16, 2003 letter that it has satisfied all regulatory requirements for establishing the beneficiary's employment in a primarily managerial and executive capacity. The petitioner states the following with respect to the beneficiary's position:

> To briefly recap, as General Manager of the subsidiary, [the beneficiary] has been responsible for directing and supervising the set-up and normal operations of the US company in procuring and importing motorcycle products to the U.S. He has developed this company's investment management, administrative, business and financial policies; and established intracompany operation procedures and systems between this company and its parent company in Taiwan. In the process, [the beneficiary] has been overseeing the general corporate business executed by other corporate executives as well as various Department managers, which include contacting and networking with American distributors, dealers and trade associations for business opportunities and arrangements. He has also been supervising his employees in negotiating various major contracts with both Taiwanese and American companies. Meanwhile, [the beneficiary] has also been playing a critical role of coordinating the business and administrative transactions between this company and its parent company. Finally, he has interviewed and recruited corporate employees in accordance with the subsidiary's corporate needs.

The petitioner claims that the above-stated job description demonstrates that the beneficiary's job duties are primarily managerial in nature. The petitioner further provides that the beneficiary supervises and controls the work of two managers and a corporate secretary, and in his "dual capacity" as chief financial officer, controls and supervises the work of the petitioner's certified public accountant. The petitioner also explains that the beneficiary makes all final decisions regarding the company's "essential functions and components," has authority over all personnel actions, "exercises discretion over the day-to-day operations of all of our administrative and business activities, including with whom and to what extent we do business," and functions autonomously at the highest level in the organizational hierarchy.

The petitioner also provides the following with regard to the beneficiary's "executive" job duties:

> As our General Manager, he directs the management of our organization and all of the company's major components and functions. He establishes the business and administrative goals and policies of our company. He exercises wide latitude in discretionary decision-making with information provided by his subordinate Department Managers and Corporate Secretaries. And he only receives general supervision from our board of directors and our parent company in Taiwan, basically informing them periodically [of] developments in our business. His duties are certainly in conformance with 'executive capacity' as defined in Title 8, CFR, Part 214.2(l)(ii)(C).
>
> While our company is relatively compact at this early juncture, our organizational structure is very clearly-defined as originally laid down by [the beneficiary]. The various tasks we

> encounter in our daily operation, such as procuring, importing, marketing and distribution of motorcycle related products and accessories in the U.S., shipping paperwork, accounting, etc. are channeled to the appropriate departments. Under the management of the General Manager, [the beneficiary], these professional employees each has his or her own specialty that makes up our overall operation in motorcycle import. Because of the compactness of this company, the division of duties are reasonably not as clearly defined as those large corporations arrange their employees [sic]. Thus, our import and supply [and] sales managers perform combined professional and managerial duties, i.e. primarily engaged in performing daily marketing and financial duties and operations while taking care of the department business. Here, their duties as shown in the chart below, rather than their managerial titles, should be considered. As you may see, most of their duties are professional day-to-day duties rather than managerial, which has been proven by a substantial amount of our business transactions concluded [sic]. They are immediately supervised by the General Manager. It should be clearly seen that [the beneficiary's] duties with [the petitioner] are substantially all managerial and executive in nature.

The petitioner outlines the organizational hierarchy and lists the job responsibilities associated with each lower-level position. The petitioner claims that because of the employment of department managers and a corporate secretary, "it is clear that [the beneficiary] is working through other managerial or professional subordinate employees who relieve him from performing non-qualifying duties involving day-to-day specific business transactions."

On review, the record does not conclusively establish that the beneficiary would be employed in a primarily managerial or executive capacity. 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). As required in the regulations, the petitioner must submit a detailed description of the executive or managerial services to be performed by the beneficiary. *Id.*

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. As noted by the director in his decision, the beneficiary's job description indicates that the beneficiary will likely be performing non-qualifying duties in the proffered position. The AAO acknowledges that the petitioner has accounted for the performance of many of the business' daily functions, including importing, sales, and secretarial work, by employees who are subordinate to the beneficiary. However, the petitioner has not demonstrated how, as chief financial officer, the beneficiary would not be responsible for personally maintaining the company's finances. The petitioner's claim on appeal that the beneficiary "controls and supervises the work" of the company's certified public accountant is not sufficient to establish that the beneficiary will be relieved from performing the petitioner's financial activities. The record indicates that the accountant is not directly employed by the petitioner, but rather is hired as a contract worker on an as-needed basis. The petitioner has failed to document who would be responsible for handling the company's payroll, maintaining financial records, paying expenses, and performing financial transactions. If the beneficiary is responsible for performing these non-qualifying functions, the question remains whether the beneficiary would be employed in a primarily managerial or executive capacity. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial or executive in nature, and what proportion is actually non-managerial or non-executive. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Performing the financial activities of the business constitutes performing a task that is

necessary to producing the petitioner's products or providing the petitioner's services. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Moreover, rather than providing on appeal a specific description of the beneficiary's job duties, counsel generally paraphrased the statutory definition of executive capacity. *See* section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). For instance, counsel explains that the beneficiary "directs the management of our organization and all of the company's major components and functions," "establishes the business and administrative goals and policies of our company," "exercises wide latitude in discretionary decision-making," and "receives only general supervision from our board of directors and our parent company in Taiwan." However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient to meet the petitioner's burden of proof. 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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Based on the foregoing discussion, the AAO cannot conclude that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity. For this reason, the appeal 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.