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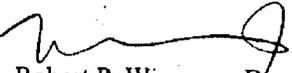
IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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)

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 nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

According to the documentary evidence contained in the record, the petitioner was established in 2000 and claims to be a computer accessories business. The petitioner claims to be a subsidiary of Shanghai Pengo Computer Accessories Co., Ltd., located in China. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as a general manager for three years, at an annual salary of \$32,400.00. The director determined that the petitioner had failed to submit sufficient evidence to establish that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity. The beneficiary was initially granted a one-year period of stay in L-1A classification in the United States and the petitioner now seeks to extend the beneficiary's stay.

On appeal, counsel argues that the beneficiary is a function manager.

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 regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

*Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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 (1)(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 with 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 serves

in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable

needs of the organization component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

The petitioner initially described the beneficiary's proposed job duties as: "Alien will continue to manage the U.S. subsidiary. He will be responsible for making personnel decisions and managing logistics and marketing of new flash memory and mini-CD products."

In a letter of support, dated September 11, 2003, counsel described the beneficiary's job duties as:

- 1) Marketing strategy planning;
- 2) Office management, including setting operating policy and making personnel decisions;
- 3) Recruitment of new workers;
- 4) Interfacing with the China parent company and affiliate companies;
- 5) Attending exhibitions and seeking new distribution channels; [and]
- 6) Logistics planning.

In a letter of support, dated September 5, 2003, the petitioner described the breakdown in the percentage of time the beneficiary would spend performing his job duties to include:

- 1) Spend 35% of his time on marketing strategy planning.
- 2) Spend 25% of his time on office management.
- 3) Spend 10% of his time on recruitment of new sales engineers.
- 4) Spend 10% of his time on conferencing and interacting with the China parent company and affiliated companies.
- 5) Spend 10% of his time on exhibitions and seeking new distribution channels.
- 6) Spend 10% of his time in logistics planning.

As evidence, the petitioner submitted copies of its Form DE-6, Quarterly wage report for the quarter ending March 31, 2003, which showed five employees employed by the organization. The petitioner also submitted a copy of its organizational chart. The chart depicted the beneficiary as general manager, [REDACTED] as logistics specialist, [REDACTED] as sales engineer, [REDACTED] as sales engineer, and [REDACTED] as application engineer, all under the beneficiary's direction. The chart also showed a contract engineering research and development division.

In response to the director's request for evidence on the subject, counsel described the beneficiary's and his subordinate's duties as:

- 1) [REDACTED] (L-1 Status, extension pending)  
Position: General Manager  
Education: College Degree  
Job Duties: [The beneficiary] is responsible for the overall management of [the U.S. entity]. He is in charge of the following: setting pricing terms to compliment marketing efforts, office management, training workers ... hold company meetings, review financial documents, improve employee relations, hire new workers, negotiate contracts

... interact with China parent company, attend industry exhibitions relating to high technology computer products, and plan logistics, etc.

- 2) [REDACTED] (Lawful permanent resident)  
Position: Sales Engineer  
Education: University Degree  
Job duties: Responsible for sales of computer media products ... and flash memory cards. Manage contract sales representatives.... Perform customer service duties.... Attend trade shows.... Train sales agents. Negotiate sales contracts.
  
- 3) [REDACTED] (U.S. citizen)  
Position: Sales/President  
Education: University Degree  
Job duties: Presently, Ms. [REDACTED] is responsible for developing marketing strategies for [the U.S. entity] products. Her work includes developing advertisements for the Internet, trade magazines, research market conditions, etc. She works closely with independent advertising specialists and market research analysts to access market conditions and forecast market risks. Ms. [REDACTED] coordinates her marketing activities with guidance from the general manager.
  
- 4) [REDACTED] (Logistics/accounting) (Adjustment applicant through marriage with U.S. citizen, case unrelated to 01 Media, Inc.)  
Position: Logistics/Accountant  
Education: University Degree  
Job duties: Ms. [REDACTED] is responsible for maintaining financial records. Her duties include analyzing financial data for inconsistencies, auditing assets, draft financial reports for review by the general manager, prepare tax documents, coordinate logistics, and manage contract warehouse workers.

The petitioner submitted a revised organizational chart which depicted [REDACTED] as company president, the beneficiary as general manager, [REDACTED] as logistics specialist, and [REDACTED] as sales engineer. The chart also listed a vacant marketing manager and application engineer's position. The chart showed contract warehouse workers under the direction of the logistics specialist, and contract sales representatives under the direction of the sales engineer. The chart also showed the contract engineering research and development division under the beneficiary's direction. The petitioner submitted a copy of its Form DE-6, Quarterly Wage Report for the quarter ending June 30, 2003, which showed the company employed four employees.

The director noted that the petitioner employed four individuals, including the beneficiary. The director further noted that the beneficiary's subordinate's salary, according to the DE-6, was at minimum wage or the equivalent to part-time salaries, not that paid for executives and/or managers in the field. The director also noted that neither the sales engineer nor the logistic specialist supervised other company employees and that their duties performed were not at a professional level. The director stated that it was clear from the evidence that the beneficiary does not supervise managers as defined or employees whose duties were professional in nature.

On appeal, counsel argues that the petitioner is not seeking to qualify the beneficiary as a first-line supervisor, but rather as a "functional manager." Counsel further argues that the beneficiary qualifies as a functional manager in that he plans, organizes, and controls the marketing and distribution function, and in so doing is not required to supervise professional employees. Counsel cites unpublished AAO decisions to substantiate his claim. Counsel submits an activities flowchart depicting the beneficiary's duties as general manager. Counsel contends that the organization employs six full-time workers, including three sales engineers, and therefore, the beneficiary does not directly perform the functions that he manages.

Counsel argues that the beneficiary has full budgetary authority over the U.S. subsidiary; has full authority to negotiate contracts on behalf of the U.S. subsidiary; is working at a senior level in the organization in relation to the function; makes strategic decisions that affect the business and workers, reviews products test/performance reports related to marketing of computer peripheral products, and will exercise full discretion in managing the day-to-day operations. Counsel further argues that the beneficiary supervises the sales engineers who are professionals. Counsel also argues that the director's reasoning is flawed in that it fails to distinguish between "sales of high-technology products and basic items such as groceries." Counsel quotes from the Department of Labor's (DOL) Occupational Outlook Handbook (OOH) and the Dictionary of Occupational Titles (DOT) to demonstrate that the entity's sales engineer's duties are complex and require the application of a highly specialized body of knowledge (computer electronics). Counsel contends that in addition to managing the in-house sales engineers, the beneficiary also manages independent sales engineers who work on a commission basis and who possess a university level science background.

Counsel's argument is not persuasive. Although the beneficiary is not required to supervise personnel, if it is claimed that his/her 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. Further, 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).

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. There has been insufficient evidence submitted to substantiate the petitioner's claim that the beneficiary's subordinates possess college and university degrees. In addition, there has been no evidence submitted to show that the duties to be performed by the subordinates require an advanced degree.

Further, the petitioner has not shown that the Department of Labor's description of a sales engineer in the OOH or DOT or sales manager in the DOT has any bearing on this proceeding. The petitioner has not shown that the Department of Labor reserves the title of sales engineer and sales manager to those working in a managerial capacity as defined at section 101(c)(44)(A) of the Act. Although commonality in job duty descriptions may be noted, the petitioner must establish on a case-by-case basis the beneficiary's qualifications.

Counsel refers to an unpublished decision in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as managerial, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as review financial documents, improve employee relations, negotiate contracts, and attend industry exhibitions do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing 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).

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, 8 U.S.C. § 1101(a)(44)(A)(ii). 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, 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. 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. 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. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)).

To allow the broad application of the term "essential function" to include any minor or low-level function within a business would render the term meaningless. The term "essential" is defined as "inherent" or "indispensable." *Webster's II New College Dictionary* 384 (2001). Accordingly, the petitioner must establish that the function is inherent and indispensable to the business rather than a low-level collateral task that is superfluous to the company's essential operations. The petitioner has not provided evidence that the beneficiary manages an essential function of the organization. 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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.