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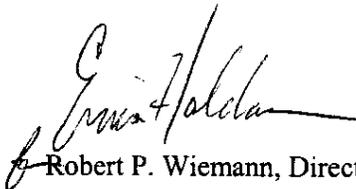
IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, Unwrapco America, Inc., endeavors to classify the beneficiary as an executive 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 a subsidiary of Unwrapco Co., Ltd. located in Korea and is engaged in the import and export of special film and packaging labels. It seeks to extend the petition's validity and the beneficiary's stay for two years as the U.S. entity's president.<sup>1</sup> The petitioner was incorporated in the State of Florida on July 2, 2001 and claims to have two employees.

On July 5, 2002, the director denied the petition because the petitioner had not established that the beneficiary will serve in a primarily executive capacity.

On appeal, the petitioner's counsel states that the beneficiary is employed in an executive capacity and directs the management of the organization or a major component or function of the organization. Counsel submits a brief and additional evidence in support of the appeal.

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 meet certain criteria. 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. Furthermore, 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.

In relevant part, the regulations at 8 C.F.R. § 214.2(l)(14)(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.

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<sup>1</sup> The AAO notes that on Form I-129, in part two, number four, the petitioner erroneously checked the box to change the status and extend the beneficiary's stay since the beneficiary is in another status. However, this option is only available where the beneficiary's basis for classification is for new employment.

Pursuant to 8 C.F.R. § 214.2(l)(14)(ii), if the petitioner is filing a petition to extend the beneficiary's stay for L-1 classification, the regulation requires:

A visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The first issue in this proceeding is whether the beneficiary will be primarily performing executive duties for the United States entity. The petitioner makes no claim that the beneficiary will be performing managerial duties.

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.

On June 27, 2002, the petitioner filed Form I-129. On Form I-129, the petitioner indicated that there were two employees and described the beneficiary's duties as developing marketing channels, building the customer base, setting the goals and strategies of the company, and hiring employees.

In addition, in a June 6, 2002 letter, the vice-president of the petitioning entity stated:

[The beneficiary] will keep playing a key role at Petitioner company and carry out the same managerial and executive function as the chief executive officer of Petitioner. As President of Petitioner Company, [the beneficiary] will be responsible for setting business goals and strategies, as well as policies, of the newly established company. . . . responsible for hiring employees . . . will exercise wide latitude in discretionary decision-making and be authorized to commit the corporation to contractual obligations.

Also, a July 16, 2001 employment agreement describes the beneficiary's U.S. duties as:

- Setting the goals and policies of the company.
- Hiring and Firing employees of the company.
- Establishing domestic and international marketing channel and building customer pool.
- Gathering up to date technology and procuring up to date manufacturing equipment for the parent company in Korea.

On March 16, 2002, the director denied the petition concluding the beneficiary will not be employed in a primarily executive capacity. The director found that the beneficiary did not primarily perform executive duties a preponderance of the time because the business has not expanded to the point where the services of a full-time president would be required.

On appeal, counsel claims that the documentation demonstrates that the beneficiary's duties are primarily executive and claims the director failed to consider the reasonable needs of the petitioner's business, which does not require a large staff. Counsel states:

Marketing was the only "major component" in said start-up period. Beneficiary has "primarily directed" this major component or function of the organization since the approval of the initial L-1A petition. Based upon the fact that the petitioner has hired employees as stated in the business plan and directed an entire function of the company, the petitioner has demonstrated the beneficiary "primarily directs the management of the organization or a major component or function of the organization."

In 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(I)(3)(ii). On review, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to establish what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include setting the business goals, strategies, and policies of the company. The petitioner did not, however, define the beneficiary's goals, strategies or policies. In addition,

the petitioner claims that the beneficiary “has extensive experience in, and profound knowledge on, the industry and the materials traded.” However, the petitioner fails to identify how the beneficiary will specifically draw upon this profound knowledge to direct the management of the organization. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Further, the petitioner 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, the petitioner depicted the beneficiary as exercising wide latitude in discretionary decision-making. However, conclusory assertions regarding the beneficiary’s employment capacity are not sufficient. 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.). 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. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

In addition, the petitioner describes the beneficiary as establishing domestic and international marketing channels and building a customer base. Since the beneficiary establishes the marketing channels and seeks out customers for the company, the beneficiary is performing a task necessary to provide a service or product. 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).

On appeal, counsel claims that the beneficiary directs a major component of the company. In particular, counsel claims that the beneficiary primarily directs the marketing of the company. However, if a petitioner claims that the beneficiary is directing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary’s daily duties attributed to directing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary’s daily duties demonstrating that the beneficiary directs the function rather than performs the duties relating to the function.

First, as discussed above, the petitioner failed to provide a sufficiently comprehensive and detailed description of the beneficiary’s proposed responsibilities. Thus, the petitioner did not provide evidence sufficient to meet the burden of proof. See *Matter of Soffici*, *supra*. Second, as demonstrated above, the beneficiary will be performing tasks necessary to produce a product or provide services; thus, the beneficiary is performing the function rather than directing the function. See *Matter of Church Scientology International*, *supra*. In sum, the petitioner has not provided evidence that the beneficiary directs a major component or an essential function of the organization.

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, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner claims to have one employee in addition to the beneficiary, but failed to provide a job title, job description, or evidence of wages paid to this employee. The petitioner did not establish that the beneficiary's subordinate relieves her from performing non-qualifying tasks.

After careful consideration of the evidence, the AAO concludes that the beneficiary will not be employed in a primarily executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the AAO is not persuaded that a qualifying relationship exists between the petitioner and foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). In particular, the record contains insufficient documentary evidence to demonstrate ownership and control of the U.S. organization. The petitioner indicated on Form I-129 that the foreign parent company has multiple shareholders and that the foreign parent company owns 100 percent of outstanding shares of the U.S. subsidiary. However, the petitioner failed to submit supporting documentation to support the claimed qualifying relationship. Again, going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Soffici, supra*. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.