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U.S. Citizenship
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File: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 19 2005

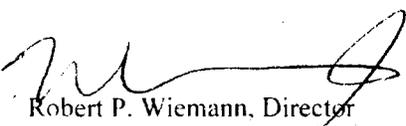
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[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 extend the employment of its Material Control Manager 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 is a corporation organized in the State of Delaware that operates as a network solutions provider. The petitioner claims that it is the subsidiary of [REDACTED] located in Hsin-chu, Taiwan. The beneficiary was initially approved for L-1A status in the United States, and the petitioner now seeks to extend the beneficiary's stay for a two-year period.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner 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 for the petitioner asserts that the beneficiary qualifies as an L-1A intracompany transferee, as she will be employed in a primarily managerial capacity, both as a function manager and as a supervisor of subordinate employees. In the alternative, counsel asserts that the beneficiary should be approved for L-1B status as an intracompany transferee employed in a capacity that involves specialized knowledge. In support of these assertions, counsel submits a brief.

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.

In a letter submitted with the initial petition on May 28, 2003, the petitioner described the beneficiary's job duties as follows:

[The beneficiary] will manage the material inventory supply system, and supervise and control the work of other supervisory professionals and managerial employees, just as she has done for [the foreign entity] and the [petitioner] pursuant to her previously approved L-1A status. In short, she will continue to manage personnel *and* an essential function within the company. [The beneficiary] will also have authority to hire and fire, and authority to make other personnel decisions at a senior level within the organizational hierarchy. With respect to the function managed, she will exercise discretion over the day-to-day operation of the function and the personnel that carry out the operations. Specifically, her managerial duties will include:

1. Managing the company's inventory control system, implementing policies, and maintaining the procedures of the inventory supply system, thereby ensuring sufficient inventory is available for sales. She will perform these functions with little supervision from other executives, and through management of other profession-level employees;
2. Interface with suppliers to place orders as necessary and ensure on-time delivery of supplies ordered;
3. Maintain control of stock on-hand in the warehouse;
4. Create and deliver reports on estimated future needs, delivery schedules, and inventory control improvements to upper-level executives.

The petitioner submitted an organizational chart which provided that the beneficiary will have supervisory authority over three subordinates titled "Supply Chain Specialist," "Order Fulfillment Coordinator," and "Channel Inventory Management."

The petitioner also submitted a document describing the beneficiary's duties as follows:

[The beneficiary's] function also includes managing the personnel of the Supply Chain Team, which consist [sic] of Order fulfillment, Channel Inventory Management and Purchasing.

- 1) **Managing Inventory: 30%**
 - a) Interface with suppliers to place orders as necessary and ensure on-time delivery of supplies ordered.
 - i) Product disposition based on sales Forecast and existing Orders from Customers
 - (1) Issue Purchase Orders
 - (2) Track and monitor open Purchase Orders
 - (3) Create Purchase Forecast to Vendors on a monthly base [sic]
 - b) Provide ETA (Estimated Time of Arrival) and ETD (Estimated Time of Departure) Manage Local Production and Built Out's

- c) Maintain a 30Day Inventory in the Channel and at the Local Warehouse
- 2) **Managing Transportation: 15%**
 - a) Assign Forwarder and set up the contract with [the petitioner's] specific needs.
 - b) Review Freight Invoices based on the negotiated Freight Cost Terms
- 3) **Monthly reporting to level executives: 20%**
 - a) Analysis [sic] Monthly report to upper level executives for inventory situation.
 - b) Analysis [sic] Monthly transportation cost status report to upper level executives
 - c) Create and deliver reports on estimated future needs.
 - d) Delivery schedules and inventory control improvements to upper level executives
- 4) **Monitor and manage the supply chain Dep. 30%**
 - a) She sets up proposal [sic] and policies to improve the link the [sic] company's internal communication chain with other department [sic].
 - b) She monitors and manage [sic] the supply chain department to improve the chain and way to fulfill Sales' demand..
- 5) **Review employees performance: 5%**
 - a) There are 3 employees under her supervision:
 - b) She reviews and monitor [sic] the work performance and efficiency and help [sic] on trouble shooting.
 - c) She has the decision to make authority over the employees.

On July 9, 2003, the director requested additional evidence. Specifically, the director instructed the petitioner as follows:

Submit the U.S. entity's organization chart to show the employees under the beneficiary's supervision, and a list of employees under the beneficiary's supervision with details as follows:

- Job Title
- Detailed job duties of each employee.
- Education level,
- Annual salaries/wages

Form DE-6. Quarterly Wage Report: Submit copies of the U.S. company's Employment Development Department (EDD) Form DE-6, Quarterly Wage Reports for all employees for the last 3 quarters that were accepted by the State. The forms should include the names, social security numbers, and number of weeks worked for all employees.

In a response dated September 29, 2003, the petitioner submitted: (1) a letter from counsel further addressing the director's concerns; (2) an organizational chart for the petitioner; (3) copies of the petitioner's Forms DE-6

for the third and fourth quarters of 2002 and the first and second quarters of 2003; (4) materials for university programs in supply chain management; and (5) previously submitted evidence. In counsel's letter, he reiterated the descriptions of the beneficiary's duties and provided information regarding the activities of supply chain management in general. Counsel asserted that the beneficiary manages an essential function for the petitioner in addition to supervising subordinate employees. In the alternative, counsel asserted that the beneficiary qualifies for L-1B status, as she possesses, and her duties require, specialized knowledge.

On October 8, 2003, the director denied the petition. The director determined that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. The director stated that "[t]here are currently no bona fide manager(s) for the beneficiary to supervise and/or delegate the actual day-to-day duties. Accordingly, the evidence submitted indicates that the beneficiary has been and will actually be performing the day-to-day duties, and any executive and/or managerial function involved will only be incidental." The director further provided that "[u]nder the regulations, to be employed as a manager or executive, the individual must primarily supervise and control the work of 'other supervisory, professional, or managerial employees' . . . within the organization." (Emphasis in original).

On appeal, counsel for the petitioner asserts that the beneficiary qualifies as an L-1A intracompany transferee, as she will be employed in a primarily managerial capacity, both as a function manager and as a supervisor of subordinate employees. Counsel states that the director failed to consider whether the beneficiary qualifies as a function manager. Counsel provides that the beneficiary is responsible for supply chain management, which is a "critical function" of the petitioner. Counsel notes that Citizenship and Immigration Services (CIS) previously approved the beneficiary for L-1A status on two separate occasions for the identical position and job duties. Counsel states that "[i]n the interest of fairness and consistency, [CIS] should not apply changes in internal policy to extension petitions where none of the circumstances have changed." As an alternative to L-1A status, counsel asserts that the beneficiary should be approved for L-1B status as an intracompany transferee employed in a capacity that involves specialized knowledge.

Upon review, counsel's assertions are not persuasive. 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). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. In the instant matter, counsel states that the beneficiary will be employed in a primarily managerial capacity. However, the submitted job descriptions fail to establish that the majority of the beneficiary's time will be devoted to managerial or executive tasks.

The petitioner stated that the beneficiary will devote 30 percent of her time to "Managing Inventory," including tasks such as placing orders with suppliers, creating and tracking purchase orders, and maintaining the petitioner's inventory. Yet, these duties appear to be non-qualifying administrative tasks. The petitioner provides that the beneficiary will devote 15 percent of her time to "Managing Transportation," including "Assign[ing] Forwarder[s] and set[ting] up . . . contract[s] with [the petitioner's] specific needs" and "Review[ing] Freight Invoices based on the negotiated Freight Cost Terms." Yet, without further explanation,

it is not possible to determine whether these are managerial tasks. The evidence of record does not contain any of these contracts such that the AAO could determine whether substantial negotiation was involved, or whether the freight forwarders were simply hired based on standard contract terms in the industry.

The petitioner indicates that the beneficiary will spend 30 percent of her time "Monitor[ing] and manag[ing] the supply chain [Department]." However, the petitioner uses general and ambiguous language to describe the tasks associated with this responsibility. For example, the petitioner states that the beneficiary "sets up proposal [sic] and policies to improve the link the [sic] company's internal communication chain with other department [sic]," and she "monitors and manage [sic] the supply chain department to improve the chain and way to fulfill Sales' demand." Yet, these broad statements provide little insight into the true nature of the tasks the beneficiary will perform on a daily basis. 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. *Id.*

The petitioner states that the beneficiary will devote five percent of her time to "Review[ing] employees[] performance." Yet, as will be discussed fully below, the petitioner has failed to establish that the beneficiary's subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. Thus, this portion of the beneficiary's time is spent acting as a first-line supervisor. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Thus, as much as 80 percent of the beneficiary's time has not been shown to involve managerial or executive tasks. Accordingly, the beneficiary's job description does not establish that she will be employed in a primarily managerial or executive capacity.

The petitioner states that the beneficiary will supervise three subordinates titled "Supply Chain Specialist," "Order Fulfillment Coordinator," and "Channel Inventory Management." Counsel correctly notes that the beneficiary is not required to supervise subordinates. However, if it is claimed that 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.

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).

Based on the foregoing, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

As an alternative to L-1A status, counsel asserts that the beneficiary should be approved for L-1B status as an intracompany transferee employed in a capacity that involves specialized knowledge. However, on Form I-129 the petitioner indicated that it is requesting an extension of the beneficiary's L-1A status. Counsel's request to amend the petition and change the beneficiary's status to L-1B on appeal is not properly before the AAO. The regulations at 8 C.F.R. § 214.2(l)(7)(i)(C) state:

The petitioner shall file an amended petition, with fee, at the service center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e. from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

The request to reconsider the original petition on appeal as a petition for L-1B classification is, therefore, rejected. If the petitioner wishes for the beneficiary to be considered for L-1B status, the regulations permit it to submit a separate Form I-129 with such a request.

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 met this burden.

ORDER: The appeal is dismissed.