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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **OCT 06 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "R. Rosenberg", written over the "Thank you," text.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The California Service Center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to classify the beneficiary as an 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, a California company established in 2012, is engaged in "imports and exports." It claims to be an affiliate of Non [REDACTED] located in China. The petitioner seeks to employ the beneficiary as a Marketing Director to open a new office.

The director denied the petition on February 10, 2014, concluding that the petitioner failed to establish the beneficiary had been employed in a primarily executive or managerial capacity by the foreign company.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us. On appeal, counsel asserts that the petitioner submitted documentation establishing that the beneficiary had been working in a managerial capacity.

I. THE LAW

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.

- (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.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, United States Citizenship and Immigration Services (USCIS) must

take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

II. THE ISSUE ON APPEAL

A. Employment Abroad in a Managerial or Executive Capacity

The issue addressed by the director is whether the petitioner established that the foreign company employed the beneficiary in a qualifying managerial or executive capacity.

B. Facts

The petitioner was established in December 2012 and filed the instant Form I-129 on October 29, 2013. In a letter of support dated October 24, 2013, the petitioner explained that the beneficiary was employed by the foreign company in the position of Director of Marketing and Public Relations and her duties included the follows:

- In charge of the functions of marketing, sales, and public relations;
- establishing and formulating management policies of the department;
- establishing development objectives of the department;
- managing the whole department/functions via other managers and store managers;
- establishing the organization of the department;
- reporting to the general manager;
- selecting and hiring high rank managers and store managers of the department;
- report and make recommendations to the board of directors about marketing, sales, and public relations;
- negotiating on behalf of the organization about marketing, sales, and public relations, [sic] etc.

The petitioner also provided a more detailed job description of the beneficiary’s position with the foreign company, with a percentage break down of her duties. In response to the director's request for evidence, the petitioner provided the same job description but also added examples. The full job description is as follows:

Description of job duties and Percentage of time required	Certain examples
In charge of the functions of marketing, sales, and public relations functions; establishing and formulating development objectives and policies for functions of marketing, sales, and public relations; Establish and formulate management policies, objectives, and strategies for the department about functions of marketing, sales, and public relations; Establish the whole organization of the for [sic] the department;	1. Perform the right of plans, proposal, approval authority, veto power to the company's promotion, marketing, sales public relations; 2. make adjustments to the product promotion, marketing,

<p>implement the strategic goals and objective of the for [sic] the department; report to Board of directors and chair each meeting for functions of marketing, sales, and public relations; review and evaluate functions of marketing, sales, and public relations projects and report to Board.</p> <p>30%</p>	<p>sales, market conditions, according to company research programs;</p>
<p>Review and approve major development objectives prepared by department manager and store managers; manage the departments through department manager and store managers; review activity reports, representation, and financial statements from the department manager and store managers to determine progress and status in attaining objectives; revise or amend objectives and plans of the department and each manager and store manager; oversee performance of the department and each manager and store manager; coordinate business operations between each department to achieve company's goals and objectives; establish, approve and oversee the department's management policies, activities, and strategies for the market that ensures attainment of company goals and profitability suggested by the Board; assist the Board with the development of long range and annual plans, and with the evaluation and reporting of progress on plans; report to the [B]oard about development status and evaluation of each project; take directions from president of [B]oard regarding overall plan for the company; set specific goals for production & technology to fit in with the plan; solve the problems of major customers; coordinate between these major customers and other departments; implement decisions of the Board;</p> <p>30%</p>	<p>3. make Adjustments to the promotion, marketing, sales, public relations and market products based on feedback from the case,</p> <p>4. Modify, approve the proposed marketing manager marketing plans;</p> <p>5. Modify, approve the proposed sales and marketing manager marketing plan;</p> <p>6. Approve the appointment and dismissal of the marketing department and specialty stores personnel;</p> <p>7. Approval budget plan of the company's marketing department and specialty stores;</p>
<p>Review and approve the department's budget;</p>	<p>8. Approve configuration</p>

<p>oversee the operating expenses to meet budget plan; examine the capital allocation, cost accounting, accounting and analytical work; Establish finance management system and other business procedures and standards within the department; oversee the implement of the financing policies within department; in charge of project and business loan of the department[.]</p> <p>20%</p>	<p>structure for the marketing department and specialty stores of the organization;</p> <p>9. Modify [sic], store sales and marketing manager to approve the proposed creation of programs such as Beijing shop, Shandong shop;</p> <p>10. Modify, approve public relations activities plans by sales and marketing manager;</p>
<p>Recruit high-level managers of the department, store managers, and senior clerks; make decision on hiring, firing, and promoting of each manager and store managers in the department; exercise the authority to hire, fire or promotion of key employees; evaluate performance of subordinates.</p> <p>10%</p>	
<p>Negotiate on behalf of the entities about marketing, sales, and public relations; represent the entities at industry conferences and other events; approve business contracts about marketing, sales, and public relations; Maintain good relationships with key customer, governments, and relevant organizations[.]</p> <p>10%</p>	

The petitioner also provided an organizational chart of the foreign company and a list of all of the beneficiary's subordinate employees at the foreign company. The beneficiary supervised a marketing manager, a net promotion specialist, three shop managers, and five shop clerks. The list provided the department, salary, education, major and work duty for each of the beneficiary's subordinates. The marketing manager was responsible for "Market Development, formulate marketing plan and implement." The net promotion specialist was responsible for "establishing Net Market, brand publicity and promotion." The other subordinates were responsible for store management or sales.

The director denied the petition on February 10, 2014, concluding that the petitioner failed to establish that the beneficiary had been employed abroad in a position that was primarily managerial or executive in nature.

On appeal, counsel for the petitioner contends that the beneficiary is one of the top managers of the foreign company, and managed the "most vital functions – marketing, sales, and public relations with the foreign entities." Counsel further states that "it is clearly evident that the beneficiary's responsibilities are primarily managerial in nature because her subordinate employees relieved her from performing operational daily duties. Counsel further states that the director "failed to consider the intent of Congress to establish the L-1 visa program which is critical to U.S. economic growth, foreign investment, and job creation for U.S. workers."

C. Analysis

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary has been employed by the foreign company in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(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 were in either an executive or a managerial capacity. *Id.*

The petitioner's provided a description of the beneficiary's job duties abroad, which included broadly stated job responsibilities. Due to the overly general information included in the job description, we are unable to gain a meaningful understanding of how much time the beneficiary spent performing qualifying tasks versus those that would be deemed non-qualifying.

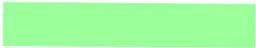
The beneficiary's job description is deficient in that it fails to provide credible and detailed information about the actual tasks the beneficiary performed when working with the foreign company. Namely, the petitioner failed to establish what specific tasks the beneficiary performed while she was "establishing and formulating development objectives and policies for functions of marketing, sales, and public relations;" "implement[ing] the strategic goals and objectives [sic] for the department;" "coordinat[ing] business operations between each department to achieve company's goals and objectives;" and, "solv[ing] the problems of major customers." The petitioner did not define the petitioner's goals and policies, or clarify the objectives and procedures for the operations department. While the beneficiary, as a claimed top manager in the company, exercises authority for planning, the petitioner has not established that her day-to-day tasks associated with overall marketing, sales and public relations functions are primarily managerial in nature. Similarly, the beneficiary's responsibilities for the "establishment and implementation of policies" is poorly defined and fails to explain what specific tasks she performs. In addition, several duties listed in the job description are repetitive and vague. 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). 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 job duties. The petitioner has failed to provide sufficient detail or explanation of the beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Furthermore, beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the foreign entity's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the foreign entity's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The petitioner submitted an organizational chart of the foreign company and a list of the beneficiary's subordinates, but provided a very brief job description for each subordinate that does not provide a true understanding of how they assisted the beneficiary in relieving her from performing operational duties with the marketing, sales and public relations functions. Thus, it is not clear if the subordinate employees relieved the beneficiary from performing operational duties. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

We will also review whether the beneficiary acted as a function manager. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See sections 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1101(a)(44)(A)(i) and (ii). 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 position description that clearly describes the duties to be performed in managing the essential function, 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. See 8 C.F.R. § 214.2(l)(3)(ii). Here, counsel on appeal states that the beneficiary managed the most vital functions for the foreign entity, including marketing, sales and public relations. However, the petitioner has not submitted evidence establishing the beneficiary's day-to-day duties in managing these functions. 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. As discussed above, the petitioner has not provided a detailed description of the beneficiary's duties sufficient to establish that she performed primarily managerial duties and thus the petitioner has not established that she primarily managed an essential function of the business.



Based on the foregoing discussion, the petitioner has not established that the beneficiary was employed abroad in a qualifying managerial capacity. Accordingly, the appeal will be dismissed.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.