



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 14 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:

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,

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 [REDACTED] located in China. The petitioner seeks to employ the beneficiary as a General Manager 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 September 16, 2013, the petitioner explained that the beneficiary was employed by the foreign company in the position of Director of Production Operations and his duties included the follows:

- In charge of the functions of production technology, product manufacturing, quality inspection;
- establishing and formulating management policies of the department;
- establishing development objectives of the department;
- managing the whole department via other managers;
- establishing the organization of the department;
- reporting to the CEO and Board of directors;
- selecting and hiring higher rank managers of the department;
- Establish and implement management policies of the department;
- Report and make recommendations to the board of directors about production technology, product manufacturing, quality inspection;
- Negotiating on behalf of the organization about production technology, product manufacturing, quality inspection, etc.

In response to the director's request for evidence, the petitioner provided a more detailed job description of the beneficiary's position with the foreign company, and a percentage break down for each duty. The full job description is as follows:

Description of job duties and Percentage of time required	Certain examples
In charge of the production technology, product manufacturing, quality inspection functions; establishing and formulating development objectives and policies for production technology, product manufacturing, quality inspection functions; Establish and formulate management policies, objectives, and strategies for production technology department;	1. Perform the right of plans, proposal, [a]pproval authority, [v]eto power, the rights of production scheduling; 2. Adjustments to the production plan according to company

<p>Establish the whole organization of the for [sic] the production technology department; implement the strategic goals and objective of the for [sic] the production technology department; report to Board of directors and chair each meeting for production technology, product manufacturing, quality inspection; review and evaluate production technology, product manufacturing, quality inspection projects and report to Board.</p> <p>30%</p>	<p>market conditions;</p>
<p>Review and approve major development objectives prepared by production & technology manager; manage the departments through production & technology manager; review activity reports, representation, and financial statements from the department to determine progress and status in attaining objectives; revise or amend objectives and plans of the departments in accordance with current conditions; oversee performance of production & technology department and each manager; coordinate business operations between each department to achieve company's goals and objectives; establish, approve and oversee production & technology 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>	<ol style="list-style-type: none">3. make Adjustments based on feedback to the status of the production process and product technology products in the market;4. Modify, approve, director of production technology proposed production plan;5. Modify, approve the proposed production technology director of product quality testing processes;6. Approve the appointment and dismissal of the production department personnel;7. approve Production budget plan by the company;

<p>30%</p>	
<p>Review and approve the production & technology department's budget; 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 production & technology department; oversee the implement of the financing policies within production & technology department; in charge of project and business loan of the production & technology department[.]</p>	<p>8. approve the organizational structure of the production sector; 9. Modify, approve the purchase plan of equipment and product updates made plans by produce Technical Officer; 10. Modify, approve the proposed raw material supply plan by director of production technology;</p>
<p>20%</p> <p>Recruit high-level managers of the production & technology; make decision on hiring, firing, and promoting of each manager in the production & technology 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 production; represent the entities at industry conferences and other events; approve business contracts about production; Maintain good relationships with key customer, governments, and research 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. According to the list of subordinates, the beneficiary supervised the Head of Technical Division, a Clerk, a Product Merchandiser, a Quality Inspector, a Foreign Trade (POB), a Transport & Warehouse Manager, a storekeeper, and a driver. The list provided the department, salary, education, major and a job duties for each of the beneficiary's subordinates.

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 – production technology, product manufacturing, [and] quality inspection with the foreign entities." Counsel further states that "it is clearly evident that the beneficiary's responsibilities are primarily managerial in nature because his subordinate employees relieved him 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(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 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 he was "establishing and formulating development management policies of the department;" "establishing development objectives of the department;" "manage the departments through production & technology manager;" "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 production operations department. While the beneficiary, as a claimed top manager in the company, exercises authority for planning, the petitioner has not established that his day-to-day tasks associated with overall production technology, product manufacturing and quality inspection 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 him from performing operational duties with the production technology, product manufacturing and quality inspection. 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 production technology, product manufacturing, and quality inspection. 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 he 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.