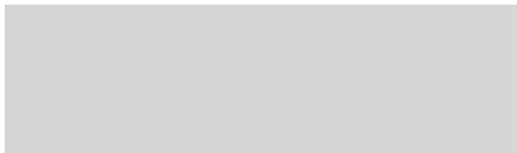




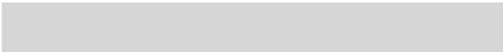
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 06 2015**

PETITION RECEIPT #: 

IN RE: Petitioner: 
Beneficiary: 

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)

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed this Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to extend the beneficiary's status 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 corporation, states that it is engaged in import, export and international trade. It is a subsidiary of [REDACTED] located in China. The beneficiary was initially granted L-1A classification for a period of one year in order to open a new office in the United States as the petitioner's president. The petitioner now seeks to employ the beneficiary in this position for two additional years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a qualifying 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 our office. On appeal, the petitioner asserts that it appears that the director did not fully review the petitioner's response to the RFE. The petitioner re-submits the beneficiary's job descriptions and information regarding the employees hired during the previous year. The petitioner stated on the Form I-290B, Notice of Appeal or Motion, that it would submit a brief and/or additional evidence in support of the appeal to us within 30 days. The record reflects that no brief or additional evidence was submitted.

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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, 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.

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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. 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. See section 101(a)(44)(C) of the Act.

II. THE ISSUE ON APPEAL

The sole issue to be addressed is whether the petitioner established that the beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition.

A. Facts

The petitioner filed the Form I-129 on July 14, 2014. The petitioner stated on the Form I-129 that it is an import, export and international trading company established in [REDACTED] with five employees and a gross annual income of \$112,970. The petitioner's Chinese parent company develops and manufactures electronically controlled window devices for public and commercial buildings.

In a letter dated July 8, 2014, the petitioner stated that the beneficiary's "main responsibilities" as its president and general manager are as follows:

1. Implement every resolution and regulation from the Board of Directors of Parent Company, and defend the interests of Parent Company.
2. Prudently, carefully, and conscientiously implement every function and power of Subsidiary Company.
3. Represent Parent Company to implement the powers of investors.
4. Manage and provide the financial report and other working reports, and be responsible for reporting to the Board of Directors and Executive members of Parent Company.

5. Be responsible for the assets maintaining and increasing invested from Parent Company.
6. Provide annual job descriptions to the Board of Directors of Parent Company, so as to report the annual business situation.

The petitioner also listed the beneficiary's "functions and powers" as follows:

1. Be qualified to be the President, General Manager, and other executive positions. According to the authorization from Parent Company, implement the operating management, financial supervision, human resource management and other function and power. Be holistically responsible for leading and hosting the managerial work in every department. Carefully implement every instruction from Parent Company.
2. For the business development and investment plans, she has the power to share suggestions, make resolutions, and organize implementation for Parent Company. She can also have the access to the necessary operating analysis report, financial report and other related materials of both Parent and Subsidiary Companies.
3. Be holistically responsible for the managerial work, economic responsibility system, assessment for different objectives. Also be responsible for the design, implementation, and ensure the annual sales plan.
4. Be holistically responsible for human resource management. She has the right to hire, promote, demote or dismiss the vice general manger [sic], directors, or staff. . . .
5. Be holistically responsible for the marketing promotion, operating activities, funds operation, and new projects exploration. Lead design and guide the marketing promotion proposals and implementation, ensure to get the sales funds back on time, and supervise the marketing department. Actively assist and support the market research of new projects, ensure the service quality, and analyze the new projects and market needs.
6. Supervise the whole process of the design, implementation and assessment of the regulations of different departments. Be responsible for the supervision of every department. Coordinate with marketing department, executive department, customer service department, financial department, human resource department, and so on. . . .

The petitioner stated that to date, the beneficiary has edited the petitioner's "position management regulations," made marketing promotion plans, led the search to identify a warehouse to purchase, organized the petitioner's trademark registration applications, arranged "employment issues," and arranged the purchase of "raw material, electric chips, electric motor" for the parent company. The petitioner explained that its products are new to the U.S. market and that "it will take some time for [American clients] to have a better understanding to our company and product." The petitioner stated that the outcome of its marketing promotion efforts so far "is not obvious" and that it requires additional time to develop the market.

The petitioner provided an organizational chart which depicts the beneficiary as CEO overseeing two vice presidents, [REDACTED] and [REDACTED]. The chart depicts Mr. [REDACTED] as both the supervisor and the sole employee of the Marketing Department and the Production Engineering Department, while Ms. [REDACTED] is identified as the supervisor and sole employee of the Operation Department, and as the supervisor of the H.R. & Finance Department, which has one employee, [REDACTED]. The chart also depicts a Research Development

Department with one employee, [REDACTED] The petitioner submitted its California Form DE-9, Quarterly Contribution Return and Report of Wages, for the second quarter of 2014 which confirmed the employment of the six individuals named in the chart.

Finally, the petitioner provided a copy of its business plan from 2013, which indicated that the company had anticipated a staff of ten employees in 2014, including the president, vice president, sales manager, finance manager and six sales people.

The director issued a request for evidence (RFE) on July 24, 2014, in which she advised the petitioner that the submitted position description did not sufficient describe what the beneficiary's duties will be under the extended petition or the percentage of time she will devote to specific duties. The director also requested additional information regarding the job duties, educational levels and salaries of other company employees hired during the previous year.

In a letter submitted in response to the RFE, the petitioner stated that the beneficiary will perform the following duties under the extended petition:

1. Direct the management of the organization establishes [sic] the goals and policies of the organization;
2. Supervising and executing all decision, and plans that made [sic] by the Board of Director from parent's company for US subsidiary;
3. Carefully, diligently utilizing the authority of US subsidiary; for the best interest of the company, both in US and in China;
4. Follow the code and regulation to attending all shareholder meetings, including US subsidiaries and parents;
5. Read all financial and other working reports in US subsidiary, understand the operation and management on timely manner; report to the Board of Director, and management;
6. Supervising and reviewing each department manager report, and make i[t] available to parent's company; report any major business activities to Board of Director, and management in China;
7. Responsible to maintain the investment value and keeping it increase possible.
8. Reporting to the Board of Director in the end of each year in written [sic] about the operation and management of US subsidiary, and personal performance in US.

The petitioner stated that the beneficiary's authority as a member of the Board of Directors and as president includes the following:

1. She has the right to access all analyzing, finance, and other company's reports;
2. She has the right to be the President, CEO and other senior level manager with the authorization from the Board of Director, to executing the duties of management, finance and employment;
3. She has the right to provide and offer the planning and suggestion regarding US subsidiary development and operation;

4. She has the right to decide the investment amount, hiring and dismissing senior level managers, and daily operations in US subsidiary;
5. She has the right to utilizing [sic] the authority of parent's company, Board of Director, as well as US subsidiary.

The petitioner submitted a new organizational chart depicting the names and job titles of each of its employees. The chart depicts the beneficiary as president/general manager, two subordinate vice presidents, and six departments, each headed by a manager or assistant manager. There are a total of four employees subordinate to the beneficiary who hold the following titles: (1) [REDACTED] -- Vice President, Marketing Department Manager, Production Engineer Department Manager; (2) [REDACTED] -- Vice President, Operation Department Manager, Human Resource Department Manager; (3) [REDACTED] -- Research Development Department Assistant Manager; and (4) [REDACTED] -- Financial Department Assistant Manager. The petitioner noted on the chart that the marketing department will be adding two to five employees, the production engineering department will add one to five employees, the research development department will add one employee and the operation department will add one to two employees.

The petitioner also submitted a chart identifying all employees along with their titles, hire date, education level and monthly salary. The petitioner indicated that all employees have a bachelor's degree in fields such as business, education and accounting. This document also included position descriptions for each employee, including the following description for the beneficiary:

- (1) Fully responsible for operation and management of the company. Be responsible for the establishment and implementation of economic responsibility system and for the assessment of various indicators.
- (2) Be in charge of preparing and implementing company's annual production and operation plan as well as investment and development plan.
- (3) Entitled to appoint or dismiss vice general managers and department managers of the company. Be in charge of evaluating daily work performance of vice general managers and department managers of the company and deciding their bonus distribution.
- (4) Be in full charge of capital operation, production, sales and marketing. Participate in the research and development of new products.
- (5) Be responsible for the draft, implementation, and assessment of various management systems.
- (6) Be in full charge of supervision and coordination. Cooperate with department managers

The director denied the petition on November 21, 2014, concluding that the petitioner did not establish that it would employ the beneficiary in a qualifying managerial or executive capacity under the extended petition. In denying the petition, the director found that the petitioner's descriptions of the beneficiary's duties did not demonstrate what she does on a day-to-day basis, and therefore did not establish that her actual duties are primarily managerial or executive in nature. The director further determined that the record did not establish that the beneficiary supervises subordinate managers, supervisors or professionals or that she manages an essential function of the petitioning company.

On appeal, the petitioner restates the beneficiary's previously submitted position descriptions and suggests that the director did not review all of the evidence in the record. Nevertheless, the petitioner states in a letter accompanying the Form I-290B that it would be submitting more detailed materials to establish that the beneficiary primarily performs managerial responsibilities and will not spend her time on day-to-day functions. As noted, the record reflects that the petitioner did not submit a supplemental brief or additional evidence in support of the appeal.

B. Analysis

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary would be employed in a qualifying managerial or executive capacity under the extended petition.

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Here, although the petitioner provided a total of five different numbered lists of the beneficiary's responsibilities, functions and powers, it has not identified what specific tasks she performs on a day-to-day basis within the context of the petitioner's current operations. The petitioner initially described the scope of the beneficiary's authority in only the broadest terms, noting that she will "implement every function and power" of the subsidiary, provide the parent company with various reports, take care of the foreign entity's investment, "be qualified to be the President," have overall responsibility for the company's sales, finances and human resources, and set up the company's departments. 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).

In response to the director's request for a more detailed description of the specific tasks the beneficiary will perform under the extended petition, and the percentage of time she will allocate to specific tasks, the petitioner submitted additional vague outlines of her responsibilities and opted not to provide the requested percentages. These revised lists of duties were similar to and equally as vague as those submitted at the time of filing and provided no additional insight into what the beneficiary actually does in her role as president of the petitioning company. For example, the petitioner stated that the beneficiary will "direct the management of the organization" and establish its goals and policies, execute all decisions and plans made by the parent company, and have the right to make hiring and firing decisions. 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. *Id.* at 1108.

Therefore, while the petitioner submitted a response to the RFE, it did not provide the requested information regarding the specific duties the beneficiary will perform under the extended petition or the amount of time she will allocate to any claimed managerial or executive tasks. 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 not provided any 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. *Id.*

Although the petitioner stated that it would submit more detailed information regarding the beneficiary's duties in support of the appeal, it has not submitted a supplemental brief or position description and, as such, it has not met its burden to establish that the beneficiary primarily performs managerial or executive duties. We cannot accept an overly broad position description and speculate as to what specific duties the beneficiary performs for the petitioner. 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)).

When examining the managerial or executive capacity of a beneficiary, we review the totality of the record, including the petitioner'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 petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and those of his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position.

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). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The petitioner has established that it employs four employees in addition to the beneficiary. These four employees hold a total of eight managerial or executive job titles, while not a single employee is designated as a regular lower-level staff member. The petitioner's claimed structure deviates significantly from the proposed structure outlined in the submitted business plan prepared in May 2013. For example, the petitioner indicated that its first six employees would be in place in 2013 and would include the president, a vice president, an office manager and three sales people. By 2014, the petitioner expected to add a sales manager, a finance manager and three additional sales people, and by 2015, the petitioner expected to have a president, vice president, three division managers and ten sales people. In contrast, the record indicates that petitioner

had perhaps one to two employees by the end of 2013, and the petitioner claims that it filled two vice president and six department manager positions as of June 2014. Further, most of the positions identified in the petitioner's organizational chart were never contemplated in the petitioner's business plan and the petitioner concedes that its market penetration has not been as effective as it anticipated, thus resulting in a slower start in terms of gross income.

Given the petitioner's evidence that three of its first six staff members would be sales people, and that it would take three years to put three department managers in place, its claims that its first four employees are performing the stated duties of the vice president, marketing manager, production engineering manager, research and development manager, operations manager, human resources manager and financial manager are not persuasive. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner indicates that it is an import and export company and has not shown that it currently performs the technical support, production engineering, research and development and project management services mentioned in the submitted position descriptions for the beneficiary's subordinates, thus raising questions regarding the credibility of these descriptions. At the same time, the petitioner has not identified who on its staff is performing the day-to-day activities associated with its import and export activities, such as sales, procurement and logistics functions.

Therefore, although the petitioner states that all of the beneficiary's subordinates are managers who also each hold at least a bachelor's degree, the totality of the record does not support a conclusion that the beneficiary's subordinates are managers, supervisors or professionals. Instead, the record indicates that the beneficiary's subordinates more likely than not perform the actual day-to-day tasks of operating the petitioner's import and export business, including sales, procurement, administrative and warehouse functions and coordination of logistics activities. The petitioner has not provided evidence of an organizational structure sufficient to support a supervisory position that is higher than a first-line supervisor of non-professional employees. Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position does not qualify as a personnel manager. We note that the petitioner has not claimed that the beneficiary qualifies as a function manager, and without the required detailed description of the beneficiary's actual duties, the record does not support a finding that she primarily manages an essential function.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in

discretionary decision making” and receive only “general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.” *Id.* Here, while the petitioner described the beneficiary’s duties in broad terms that at times paraphrased the statutory definition of executive capacity, it did not provide a detailed description of her duties sufficient to establish that she actually primarily performs qualifying executive tasks, nor did it establish how the petitioner’s four-person staff, who are all claimed to be department managers, relieve her from substantial involvement in the day-to-day operations of the business.

In sum, as the petitioner has not provided a detailed description of the beneficiary’s actual duties or credible descriptions of the duties performed by her four-person subordinate staff, the totality of the evidence in the record is insufficient to establish that the beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition. Accordingly, the appeal will be dismissed.

III. CONCLUSION

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.