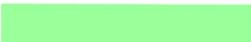


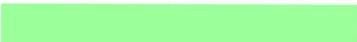


U.S. Citizenship  
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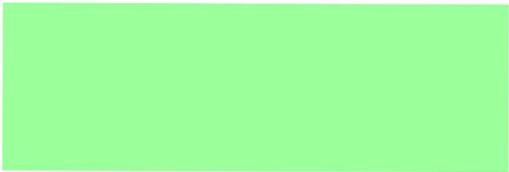


DATE: JAN 26 2015 OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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)

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 Director, California Service Center (the "director"), 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 the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to classify the beneficiary 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, a California corporation organized on May [REDACTED] indicates on the Form I-129, that it is a "[m]anufacturer and developer of IC, module and baby monitor and related products." The petitioner states it has a qualifying relationship with "[REDACTED]" an entity located in China.<sup>1</sup> The petitioner seeks to employ the beneficiary as its general manager.

The director denied the petition finding that the petitioner failed to establish that the foreign entity had employed the beneficiary 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 this office. On appeal, the petitioner asserts that the foreign entity has employed the beneficiary in a qualifying 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.

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;

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<sup>1</sup> The petitioner refers to itself as a subsidiary of the foreign entity throughout the record. Upon review of the ownership of both the foreign entity and the petitioner, the petitioner is an affiliate of the foreign entity, as both entities appear to be owned by the same individual. See 8 C.F.R. § 214.2(l)(1)(ii)(L)(1).

- (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.

## II. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary has been employed by the foreign entity in a managerial or executive capacity.

### A. Facts and Procedural History

In an attachment to the Form I-129, the petitioner stated that the beneficiary had been employed as the foreign entity's Director of IC Development from January 2008 to the present. The petitioner identified the beneficiary's job duties for the foreign entity as:

[T]o survey related patents and compare performance of the competitors, research competitor product specification, interface with customers to define features, analyze the system performance based on function blocks, work with system engineers on system and block level specifications, architect the diagram, design top-level circuits, simulate the detailed schematic, work out floor plan, instruct layout engineers, mentor testing engineers, bench test and debug problems and furnish solutions, and provide technical support to the production.

Her additional responsibilities include leading a team of 4 engineers to work various assignments including a top-level, consisting of ESD, power-on-reset, power and ground

assignment; front-end, block circuit simulation and performance evaluation; back-end, optimize layout arrangement, post layout simulation. In addition, she is also responsible for evaluation and mass production, function and performance test, circuit level and system level evaluation, solve problems on mass production as well as application support, and help customers to apply the IC in their system.

Her notable projects include a power line carrier IC with calibration for power communication, 0.35um CMOS process, a series of combo chip for FM/FSK receiver, 0.35um CMOS process, and a series of combo chip for FM/FSK receiver, 0.35um CMOS process [sic].

The beneficiary, in her submitted resume, also provided this information although she listed two projects she identified as "[a] power line carrier IC with calibration for power communication, 0.35um CMOS process" and "[a] series of combo chip for FM/FSK receiver, 0.35um CMOS process."

In a letter, dated November 21, 2013, the president of the foreign entity noted that the beneficiary is responsible for the following "managerial duties" in addition to other responsibilities:

1. Managing, supervising and directing IC Design Department consisting of top engineers in charge of research and development of IC designs and products that expand and increase company revenue stream (30%);
2. Performing executive, managerial and recruitment functions within IC Design Department consisting of 10 employees. These functions includes [sic] setting departmental budgets, policy, goals, promoting, transferring, hiring and terminating employees (20%);
3. Working with other top executives to promote positive, innovative and cooperative work environment and provide leadership example of the company; promote a culture that reflects the company's values, encourages good performance, and rewards productivity (10%);
4. Managing and supervising technical team in evaluation and mass production, function and performance test, circuit level and system level evaluation, solving problems on mass production as well as application support for customers (20%);
5. Working with marketing team to [sic] evaluating and gathering market intelligence, technology news and patents and compar[ing] performance of the competitors and monitoring the research of competitor product specification, interfacing with customers to define features, analyze the system performance based on function blocks (10%);
6. Working with system engineers on system and block level specifications, architect the diagram, design top-level circuits, simulate the detailed schematic, work out floor

plan, instruct layout engineers, mentor testing engineers, bench test and debug problems and furnish solutions, and provide technical support to the production (10%); and

7. Planning and implementing future North America locations and market expansion including establishing offices in [REDACTED] in the future (10%).

The foreign entity president noted that the beneficiary currently manages and supervises five engineers, [REDACTED], a senior layout engineer, [REDACTED] a layout engineer, [REDACTED] manager of IC design, [REDACTED] a design engineer, and [REDACTED], a design engineer. The initial record also included a list of the foreign entity's employees with a partial translation. The translated version included the beneficiary and [REDACTED] a "CS attaché, e-commerce," as the foreign entity's employees, among others. The translated version did not identify [REDACTED] as the foreign entity's employees.

In a response to the director's request for additional evidence (RFE), dated May 14, 2014, the president of the foreign entity repeated the beneficiary's responsibilities previously provided in the letter dated November 21, 2013. The foreign entity president added that the beneficiary's responsibilities relating to executive, managerial and recruitment functions within IC Design Department also included "*determining proper wage and salary levels and adjustments and approving promotion and leaves.*"

The record in response to the director's RFE also included the foreign entity's organizational chart showing the beneficiary in the position of technical director of IC design over three divisions. The division identified as IC Design listed [REDACTED] as the individuals within the division, the Application and Support Division listed [REDACTED] as the sole employee in the division and the IC Manufacture Division listed [REDACTED] as the sole employee in the division. The foreign entity also included a revised list of its employees identifying the members of the "IC Department" in which it indicated that [REDACTED] is a layout manager, [REDACTED] is a layout engineer, and [REDACTED] are production engineers.<sup>2</sup> Although the revised list indicated these individuals were hired in 2009 and 2011, the record does not include an explanation as to why [REDACTED] were not included in the foreign entity's initial list of employees.

The record in response to the director's RFE also includes a one-page document listing the beneficiary and the four individuals shown in the three divisions and a brief description of these individuals' responsibilities. The record further included meeting minutes for a meeting conducted by [REDACTED] on March 20, 2014, between the beneficiary and [REDACTED] individuals identified by first name only, as well as information on two additional meetings between the beneficiary and the president of the foreign entity and petitioner. The petitioner provided a copy of a letter, dated May 1, 2014, from a third party company noting that the third party company had been working with the beneficiary in the redesign of printed circuit boards and adapting the third party company's designs to an automated assembly process to be carried out by the foreign entity.

<sup>2</sup> The employee list submitted at the time of filing identified [REDACTED] as a manager assistant in the RFS Department and [REDACTED] as a material specialist in the PMQ Department. It did not include an IC Department.

Based on the evidence submitted, the director determined that the petitioner had not established that the beneficiary is employed in a managerial or executive capacity for the foreign entity.

On appeal, the petitioner asserts that it has provided sufficient evidence to demonstrate that the beneficiary has been employed in a managerial capacity for the foreign entity. The petitioner claims that the beneficiary is one of the foreign entity's top managers in charge of managing a team of professional engineers. The petitioner also references the foreign entity's letters describing the beneficiary's responsibilities and asserts that the tasks described and the percentage of time spent on the tasks shows that the beneficiary spends over 80 percent of her time on managerial functions.

### B. Analysis

Upon our review of the totality of the evidence submitted, we find that the petitioner has not established that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity as defined above.

As counsel noted, when examining the executive or managerial capacity of the beneficiary, USCIS will look first to the description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Moreover, we observe that the petitioner's description of the job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.* Beyond the required description of the job duties, we review the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company'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 company's business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

We next note that the definitions of executive and managerial capacity each 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 show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). In addition, we note that the fact that the beneficiary owns or manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

In this matter, the petitioner's description of the beneficiary's duties in the attachment to the Form I-129 depict the beneficiary as performing research, interfacing with customers, analyzing the system performance, working with system engineers, architecting and designing circuits, bench testing and debugging problems, furnishing solutions, and providing technical support. These generally described duties appear to be operational tasks necessary to design, sell, and adapt the foreign entity's product. Although the petitioner noted that the beneficiary works with and mentors various engineers as well as leading four engineers on particular assignments, the petitioner does not detail the beneficiary's daily duties as a mentor or a leader of the team of engineers. Accordingly, it is not possible to discern that the

beneficiary is actually performing a supervisory or managerial role in this generally described capacity. We also observe that the beneficiary's resume most closely tracks the description provided by the petitioner in the attachment to the Form I-129, which depicts the beneficiary primarily performing operational, not managerial, tasks.

The foreign entity, in both of its letters submitted for the record, has described the beneficiary's duties in broad and vague terms. For example, the foreign entity stated the beneficiary managed, supervised and directed the IC Design Department 30 percent of the time, performed executive, managerial, and recruitment functions within the IC Department for 20 percent of the time, and managed and supervised the technical team in operational tasks for 20 percent of the time. Neither the foreign entity nor the petitioner detail how managing, supervising and directing the IC Design Department and performing executive, managerial and recruitment functions within the IC Department differ in actual daily tasks. Accordingly, it is not possible to conclude that the beneficiary actually spends 50 percent of her time performing these generally described duties; rather it appears the foreign entity has simply listed this broad category of duties twice. The foreign entity also fails to describe any actual duties associated with the beneficiary's responsibility for managing and supervising the foreign entity's technical team. Thus, it is not possible to ascertain whether the beneficiary is primarily supervising the technical team or is a senior leader actually performing the engineering tasks necessary to produce the foreign entity's product. The foreign entity's statement that the beneficiary spends 10 percent of her time working with other top executives as a role model does not describe any actual duties associated with this role.

These general and repetitive statements do not detail the beneficiary's actual daily duties and do not convey an understanding of what the beneficiary actually does for the foreign entity on a daily basis. The record does not include any additional details or specific tasks related to these duties, nor does the record demonstrate how such duties qualify as managerial or executive duties. Upon review of these vaguely stated responsibilities, it is not possible to conclude that the beneficiary actually spends 80 percent of her time performing duties in the capacity of either a manager or an executive.<sup>3</sup>

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 provide 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. *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).

Here we also find that the petitioner has presented inconsistent information regarding the beneficiary's claimed subordinates. The foreign entity initially indicated that the beneficiary managed and supervised five engineers but the foreign entity did not list four of these individuals on its list of employees submitted in support of the petition. In response to the director's RFE, the foreign entity indicated that the beneficiary was the technical director over three divisions. The employees listed in the IC Design

<sup>3</sup> On appeal, the petitioner acknowledges that working with the marketing team and with system engineers are duties that require the beneficiary to perform higher-level engineering tasks and are not duties that are implicitly managerial or executive in nature. We agree that as described these duties comprise operational tasks and are not managerial or executive tasks.

Division, [REDACTED] were originally referenced by the foreign entity as the beneficiary's subordinates but were only shown as employees on the foreign entity's revised list of employees. The initial record did not list [REDACTED] as the beneficiary's subordinates. Although they were included on the initial employee list, they were identified as working in different departments with different job titles. In addition, the initial record identified other individuals as the beneficiary's subordinates but does not include these individuals as the beneficiary's subordinates in response to the director's RFE. As noted above, the petitioner has not explained why individuals hired in 2009 and 2011 were not included in the foreign entity's list of employees. In addition, the petitioner does not explain why the identity and position of the beneficiary's claimed subordinates changed. Thus, the record does not present a consistent description of the identity of the beneficiary's subordinates and the positions held and duties performed by the claimed subordinates. 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).

Upon review of the totality of the record, the record is deficient in probative evidence establishing the beneficiary's actual duties abroad. Moreover, the record contains inconsistent information regarding the beneficiary's claimed subordinates and the foreign entity's actual employees. The petitioner has not submitted probative evidence of the beneficiary's duties, or the presence of other employees to relieve the beneficiary from performing operational and engineering duties. The record does not include other evidence that might contribute to a understanding the beneficiary's actual duties and role in the foreign entity. Based on these deficiencies, the petitioner has not established that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity. Accordingly, for this reason the appeal will be dismissed.

### III. CONCLUSION

In this matter, upon review of the totality of the record, the record does not establish that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity. Accordingly, the appeal will be dismissed.

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 petitioner has not met that burden.

**ORDER:** The appeal is dismissed.