



U.S. Department of Justice

Immigration and Naturalization Service

D2

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



**PUBLIC COPY**

File: EAC-99-116-51811

Office: Vermont Service Center

Date:

IN RE: Petitioner:  
Beneficiary:



06 NOV 2001

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is engaged in international travel coordination and computer manufacturing. Information contained in the record indicates that the beneficiary was admitted to the United States on June 19, 1996 as an L-1 intracompany transferee, until January 16, 1997 and subsequently received extensions of stay until June 18, 1999. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president for three years. The director determined that the petitioner had not established that the beneficiary would continue to be employed primarily in a managerial or executive capacity.

On appeal, counsel states that the Service erred in concluding that the beneficiary does not qualify for classification under section 101(a)(15)(L) of the Act in that it did not fully consider the documentation submitted by the petitioner.

The issue in this proceeding is whether the beneficiary will continue to be employed primarily in a managerial or executive capacity.

Section 101(a)(44)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(44)(A), provides:

"Managerial capacity" means 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), provides:

"Executive capacity" means 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.

The United States petitioning entity was established in 1995 and states that it is a wholly-owned subsidiary of Shandong, Jinan, China. The petitioner seeks to extend the employment of the beneficiary for a three-year period at an annual salary of \$32,000.

The petition describes the beneficiary's duties in the proposed position in the United States as establishing, implementing, and evaluating policies and plans of the company, overseeing daily operations and making decisions concerning financial, personnel and business matters.

The beneficiary states in his letter dated February 24, 1999, that he is responsible for using discretionary power with respect to the petitioning entity's daily operations including hiring new employees, initiating and making financial arrangements, such as applying for and obtaining a short-term loan, expanding the petitioning entity's operations, setting operational targets, deciding compensations for employees and other managerial functions.

On appeal, counsel states that the beneficiary's responsibilities are the same as those outlined in the regulations for "executive capacity." Counsel also states on appeal that the beneficiary has employees, one being a part-time accountant and the other being an independent contractor for sales and technical support purposes.

However, in a letter signed by the general manager dated April 28, 1999, it states that there are three people working under the beneficiary. They are the general manager, who is responsible for developing the local presence of the company in the travel business community, developing procurement sources for the line of backplane computer system products and overseeing daily operations involving management, financial and personnel matters. Also, a computer technician, who is responsible for soliciting with potential customers regarding backplane system sales and repairs as well as providing technical support and services, and a clerk, who is responsible for coordinating overseas travel groups with hotels, arranging ticketing, travel plans for travel groups and routine clerical work. The letter also mentions the use of independent contractors, who are responsible for sales and marketing, receiving orders and shipping products to customers.

The petitioning entity's 1997 U.S. Corporate Income Tax Return shows that \$46,366 was paid out in salaries and wages. The record also contains the 1998 Miscellaneous Income (Form 1099-MISC) for Robert Doulbakian, the general manager. Absent evidence, such as contracts, wage and earning statements, etc., the petitioner has not presented convincing evidence to show that the above named persons, were actually employees of the petitioning entity under the beneficiary's supervision and paid the above stated wages for more than one year. Furthermore, the responsibilities of the above named persons, excluding the part-time accountant whose duties were not mentioned, demonstrate that the beneficiary will not be supervising other managerial or supervisory personnel.

Upon review of the record, the petitioner's description of the beneficiary's duties and asserted staff have not demonstrated that the beneficiary functions or will function at a senior level within the organizational hierarchy other than in position title. There is no evidence to establish that the petitioner employs a subordinate staff of professional, managerial, or supervisory personnel who relieve the beneficiary from performing the day-to-day functions of the petitioning entity. Further, both the Act and the Service regulations state that a first-line supervisor is not considered to be acting in an executive capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv). The record contains no comprehensive description of the beneficiary's duties that demonstrates that the beneficiary will be managing or directing the management of a department, subdivision, function, or component of the petitioning organization. Based on the evidence

submitted, it cannot be found that the beneficiary will continue to be employed primarily in an executive or managerial capacity. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.