



U.S. Department of Justice

Immigration and Naturalization Service

DP Private Copy

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



File: EAC 99 121 52151 Office: VERMONT SERVICE CENTER Date: 05 DEC 2001

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

Identifying data deleted to  
prevent clearly unwarranted

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. Weimann, Director  
Administrative Appeals Office

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

The petitioner is described as an import and retail company specializing in silk apparel. The petitioner seeks to extend the beneficiary's stay in the United States and employ the beneficiary as the president of a separate company. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, the petitioner disagrees with the director's decision and asserts that it has a sophisticated hierarchy of workers, middle managers and sales managers. The petitioner also asserts that the beneficiary is a top-level executive manager.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(1)(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 (1)(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.

The issue on appeal is whether the petitioner has established that the beneficiary has been and will be employed in a primarily managerial or executive capacity.

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

The term "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:

The term "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

iii. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petition indicates that the petitioner is comprised of both a California and a New York company and both companies have filed the present petition jointly.<sup>1</sup> The New York company was

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<sup>1</sup> There is no provision in the statute or regulations to allow two separate companies to file a petition jointly. The record

incorporated in 1996. It appears to be a wholly owned subsidiary of a California company incorporated in 1993. The California company initially petitioned for the beneficiary to enter the United States as an L-1 intracompany transferee. The California company is a wholly owned subsidiary of a Chinese corporation. The California company's petition was approved and the beneficiary entered the United States in October of 1995. In August of 1996, the beneficiary transferred to the newly incorporated New York company as its president, without filing an amended petition to reflect the change in employers. The beneficiary claims to have continued to hold the title of vice-president of the California company. In the petition, on appeal, the petitioner indicated that it was requesting the continuation of the beneficiary's employment as the president of the New York company.

The New York company described the beneficiary's job duties generally as overseeing sales efforts, setting and administering the goals and policies of the company, communicating with the California subsidiary and the parent corporation, hiring employees and independent contractors, engaging in negotiations with customers and suppliers, drafting reports, and occasionally inspecting merchandise in person.

The director requested additional information regarding the ownership and control of the petitioner and the parent organization. In addition, the director requested that the petitioner submit additional evidence establishing that the beneficiary had been employed abroad in a managerial or executive capacity. The director requested further, that the petitioner provide evidence that the beneficiary would be employed in a managerial or executive capacity with the petitioner. Finally, the director requested evidence that the foreign entity was doing business and that the petitioner had secured premises and was doing business in the United States.

In response, the petitioner re-submitted, among other documents, the description of the beneficiary's job duties for the New York company that had been attached to the petition. The petitioner also re-submitted an organizational chart and tax information in an effort to show that the New York company employed other individuals.

The director determined that the record was confusing on the number of individuals employed by the New York company. The director also determined that the record did not support a

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reveals that the beneficiary is no longer employed by the company that initially petitioned for the beneficiary's services. As will be discussed, the beneficiary's current employer failed to file an amended petition in 1996 to reflect the change in employers, contrary to 8 C.F.R. 214.2(l)(7)(I)(C). Accordingly, the beneficiary failed to maintain his previously accorded status. 8 C.F.R. 214.1(e).

conclusion that the beneficiary was supervising professionals or was engaged in primarily executive or managerial duties. The director found that the job description for the beneficiary was vague and general in nature. The director also noted that the New York company did not provide job descriptions of the beneficiary's subordinates. Finally, the director determined that the record did not support a finding that the beneficiary would function at a senior level within the organization.

On appeal, the petitioner re-submits the description of the beneficiary's job duties that had been attached to the petition. In addition, the petitioner submits Internal Revenue Service 1099 Forms indicating that payment was made to three individuals during the year of 1998 and invoices and check copies indicating that payment was made to an accountant in the years 1998 and 1999. The petitioner also submitted a customer list and other tax information to demonstrate sales volume.

On review, the petitioner has not provided sufficient information to demonstrate that the beneficiary will be directing the management of the organization or a major component or function of the organization. There is also insufficient information in the record to conclude that the beneficiary will be managing the organization or a department, subdivision, function, or component of the organization. The petitioner provides only general information when describing the daily activities of the beneficiary. As noted by the director, the description of the beneficiary's job duties is vague and general in nature, and essentially serves to paraphrase the elements of the regulatory definition of managerial and executive capacity. On appeal, the Service still has no concrete information describing the actual day-to-day activities of the beneficiary. The record does not support a conclusion that the beneficiary is directing the management of the organization or managing the organization or a department or subdivision of the organization.

In addition, the petitioner has not provided sufficient information to show that the beneficiary will supervise and control the work of other supervisory, professional, or managerial employees. The sales manager apparently supervises three or four independent sales representatives. However, based on the payments made to the independent sales representatives in comparison with the claimed New York company's sales volume, it appears these individuals do not make the majority of the sales of the company. It appears that the sales manager and the beneficiary are still the individuals primarily performing the tasks necessary to produce a product or to provide services to the company.

The petitioner also provides information to show that the production manager had begun to supervise a quality assurance technician. However, the technician was hired sometime after the petition was filed. 8 C.F.R. 103.2(b)(12) requires that the application or petition be denied when evidence submitted does not

establish filing eligibility at the time the application or petition is filed. The employment of the quality assurance technician therefore, does not contribute to the record and cannot be used to establish that the beneficiary is supervising other supervisory or managerial employees.

The petitioner's evidence of payment to an accountant also cannot be used to establish that the beneficiary routinely supervises a professional individual. An accountant may be deemed a professional for purposes of the managerial capacity classification. However, based on the record, the accountant in this case is employed on an intermittent and part-time basis. The beneficiary's limited contact with the accountant is insufficient to establish that the beneficiary supervises a professional employee.

A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. Matter of Church of Scientology International, 19 I&N Dec. 593, 604 (Comm. 1988). Based on the record, the sales manager and the production manager are managers in position title only and the beneficiary is acting as a first-line supervisor to these two employees. The limited contact with the accountant is insufficient to establish that the beneficiary is daily supervising a professional employee. Overall, the record as presently constituted does not demonstrate the petitioner has sufficient staff to relieve the beneficiary from performing non-qualifying duties.

Beyond the decision of the director, it appears the transfer of the beneficiary from the approved California petitioner to the New York petitioner was completed without notice to the Service as required in 8 C.F.R. 214.2(1)(7)(i)(C). The regulation states in pertinent part that, "the petitioner shall file an amended petition, with fee, at the Service Center where the original petition was filed to reflect changes in approved relationships, . . . change in capacity of employment . . . or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act." In this case, the transfer of the beneficiary to a new company without notice to the Service did not allow the Service to timely review whether the New York company could demonstrate that the beneficiary remained eligible for the L-1 classification. As stated at 8 C.F.R. 214.1(c)(4), an extension of stay may not be approved for an applicant who failed to maintain the previously accorded status. There is no appeal from the denial of an application for extension of stay. 8 C.F.R. 214.1(c)(5). As the appeal will be dismissed for the reason stated above this issue will not be examined further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought 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.