



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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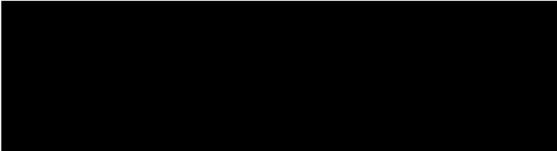
Date: DEC 17 2001

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:



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. Weimann, Director
Administrative Appeals Office

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DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, on December 28, 1999. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as an international trade and marketing concern. The petitioner seeks to employ the beneficiary in the United States in a specialized knowledge position described as business manager. The director determined that the petitioner had failed to establish that it was doing business in international trade and marketing.

On appeal, counsel submits a written statement and additional evidence.

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.

8 C.F.R. (1)(1)(ii)(G) states that:

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in

the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The United States petitioner was incorporated in 1989 and states that it is a subsidiary of China Service Corporation for Chinese Personnel Working Abroad (CSC). The petitioner declares that the beneficiary will be one of four employees. The petitioner claimed on its 1998 Internal Revenue Service Form 1120 that it had generated \$1,719,160 in gross revenues. The initial petition was filed July 1999. The petitioner seeks to employ the beneficiary in an L-1B specialized knowledge category for three years.

The primary issue in this proceeding is whether the petitioner has submitted adequate documentation to establish that it has been doing business as an employer in the United States.

8 C.F.R. 214.2(1)(1)(ii)(H) defines the phrase "doing business" as follows:

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petitioner initially submitted the following pertinent documents:

Documentation showing the purchase of a 15-unit retail and apartment building in San Francisco, California, with the deed of trust naming the foreign entity as the beneficiary, dated October 1, 1992;

Invoices and contracts for several transactions taking place in 1996 and one transaction taking place in January of 1997;

Bills of lading for several transactions in 1996.

On August 10, 1999 the director requested additional evidence from the petitioner on a number of issues, including evidence the petitioner had been active and had been conducting business in international trade. The director specifically requested the petitioner's original bank statements, original major sales invoices, original Shipper's Export Declaration Form 7525-V, Shipper's Export Declaration for In-Transit Goods Form 7513 and copies of the latest corporate financial statements, including balance sheets, statements of income and expenses. The director

also requested copies of the latest Internal Revenue Service (IRS) Forms 941, DE6, W-2s and any W-3s evidencing wages paid to employees by the petitioner.

In response, the petitioner submitted a letter from the Bank of America stating that the petitioner had maintained a business bank account at the bank since June of 1993. The petitioner also submitted four 1998 IRS Form W-2s for four employees and IRS Form 941s covering the period of March 1998 through June 1999. The petitioner submitted in addition, three invoices for purported sales in 1999. The petitioner also re-submitted documents that had been previously submitted with the petition, including the latest IRS Form 1120.

The director in her decision stated that the petitioner had not submitted original business bank statements, original major sales invoices, original Shipper's Export Declaration Form 7525-V, original Shipper's Export Declaration for In-Transit Goods Form 7513. The director concludes that the evidence in the record did not establish that the petitioner had been doing business in international trade and marketing.

On appeal, the petitioner submits, among other documentation, three bills of lading dated May 1, 1998, May 26, 1998 and November 17, 1999. Counsel for the petitioner asserts that it has submitted voluminous documentation showing that the petitioner is doing business in the United States and that the Service's request for original bank statements for over ten years is onerous and unnecessary in light of the other documentation submitted. Counsel also asserts that the petitioner's payment of employees and taxes confirms that the petitioner is doing business in the United States.

On review, the record as presently constituted is not persuasive in demonstrating that the petitioner has been engaged in the regular, systematic, and continuous provision of goods or services. The petitioner claims to be engaged in the import and export of various products. However, the record submitted to the director initially and in response to the request for evidence contained no contracts or bills of lading since the January 1997 invoice and bills of lading. The three 1998 and 1999 invoices, which are unsupported by any other evidence, are insufficient to establish the petitioner is actively engaged in the import and export business. Moreover, a business that is involved in only three transactions over a year will not be considered to be doing business in a regular, systematic, and continuous manner. The letter from the Bank of America indicating the petitioner maintained a bank account is not sufficient to show that the petitioner is actively engaged in doing business. Likewise, tax records showing payment of salary to employees is not sufficient to indicate the petitioner is engaging in the provision of goods and/or services. It appears the petitioner is merely acting as an agent for the foreign entity abroad. Accordingly, the petitioner

has failed to demonstrate that it has been doing business through the regular, systematic, and continuous provision of goods or services. For this reason, the petition may not be approved.

Beyond the decision of the director, further review of the record discloses that the petitioner has not established that the beneficiary is to perform a job requiring specialized knowledge in the proffered position. Although the petitioner asserts that the beneficiary's position requires specialized knowledge, the petitioner has not articulated any basis to the claim that the beneficiary will be employed in a specialized knowledge position. Other than submitting a general description of the beneficiary's job duties, the petitioner has not identified any aspect of the beneficiary's position which involves special knowledge of the petitioner's product, service, research, equipment, techniques, management, or other interests. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). As the appeal will be dismissed for the above reasons, this issue need not be addressed 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.