



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536

File: WAC 98 190 52946 Office: CALIFORNIA SERVICE CENTER 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:

**Public Copy**

**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, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an import and export company of apparel products. The petitioner seeks to continue the employment of the beneficiary in the United States as its president. The director indicated she was unable to ascertain the authenticity of the parent company and the United States subsidiary and also noted that the petitioner had failed to respond to a notice of intent to deny the petition.

On appeal, counsel for the petitioner asserts that documents were timely submitted in response to the notice of intent to deny and provides a copy of a certified return receipt with a receipt date of May 10, 1999. Though the return receipt does not identify the sender of the documents, the Associate Commissioner in this case will accept that petitioner timely responded to the notice of intent to deny. Counsel for the petitioner asserts that evidence submitted in response to the notice of intent to deny verifies that the beneficiary is employed in an executive capacity and the petitioner is actively doing business in the United States.

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 United States petitioner is a company incorporated in June of 1994 in the State of California. The petitioner states that it is "mainly engaged in the business of importing and wholesaling

apparel products from China to the United States." The petitioner purports to have a qualifying relationship with a foreign entity licensed to develop real estate in China. The petitioner is requesting that the previous approval of the L-1A classification be continued for the beneficiary as its president.

The first issue in this proceeding is whether the petitioner is continuing to do business 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 a lease agreement dated April 1, 1998 for a term of one year from April 1, 1998 through March 31, 1999 for 803 feet of rentable space at Suite 201A, 2211 Hacienda Boulevard, Hacienda Heights, California. The petitioner on the petition indicated its address was Suite [REDACTED] at [REDACTED] Hacienda Heights, California. The Service visited 2211 Hacienda Blvd. in Hacienda Heights, California on July 30, 1998 to verify the petitioner was doing business at the site. The Service was unable to establish that the petitioner was in fact conducting business on the site.

The petitioner also initially provided copies of invoices, contracts, bills of lading, and Custom Form 7501s for transactions conducted in 1997. The petitioner also submitted its 1997 Internal Revenue Service (IRS) Form 1120, an unaudited financial statement for 1997, and an unaudited financial statement ending in May of 1998.

On appeal, counsel for the petitioner submits a lease agreement dated February 25, 1999 for a one-year term from October 1, 1998 through April 30, 1999 for 288 feet of rentable space at Suite 100B, 2211 Hacienda Boulevard in Hacienda Heights, California. Counsel also submits a lease agreement dated September 18, 1998 for a one-year term from October 1, 1998 through September 30, 1999 for 712 feet of rentable space at Suite 200A, 2211 Hacienda Boulevard in Hacienda Heights, California. Counsel, in addition, submits the petitioner's bank statements for the months of February through December of 1998. The bank statements are addressed to the petitioner at addresses in Arcadia and Alhambra, California. Counsel further submits an uncertified letter from an individual who states he is the co-owner of the building located at 2211 Hacienda Boulevard in Hacienda Heights, California. The co-owner indicates that the petitioner has been a tenant of the building from April of 1997, first located in Suite 214 and then

in May of 1998 in Suite 201 and in October of 1998 expanding to Suite 200A.

Counsel also submits copies of facsimiles from the petitioner inviting individuals to a trade fair to be held in San Francisco and Los Angeles in November of 1998. In addition, the petitioner provides a statement of purported remittances to it from four organizations in China. Counsel further submits the petitioner's 1998 IRS Form 1120.

Counsel asserts that "[t]he Petitioner, Anpu International, Inc. has a lease at the address indicated on the L-1 petition" and that, "the Petitioner, Anpu International, Inc., is actively running as the U.S. Subsidiary;"

Counsel's assertions are not persuasive. The copies of leases submitted by counsel on appeal and counsel's assertion regarding the petitioner's location confuse the issue of the petitioner's actual location. The uncertified statement of an alleged co-owner of the building also adds to the confusion by not recognizing a lease apparently entered into for suite 100B at the premises. Further the petitioner's bank statements are submitted to addresses unrelated to the premises where petitioner claims to be conducting business. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988). On review of the record as presently constituted, including the Service's site visit, the petitioner has not established it has premises located at 2211 Hacienda Blvd. in Hacienda Heights, California and is conducting business at that site.

In addition, the record contains no evidence the petitioner entered into contracts, imported or exported goods or otherwise conducted business in the United States in 1998. The only documentation provided by the petitioner consists of facsimiles of invitations from the petitioner regarding a trade fair to take place in November of 1998. This is insufficient to show that the petitioner actively conducted business in 1998. There is no supporting documentation that would indicate that the petitioner received the remittances from Chinese organizations in the course of doing business in a regular, systematic and continuous manner. Further, the petitioner's IRS Form 1120 demonstrates that the petitioner's net income decreased significantly in 1998. Accordingly, the petitioner has failed to demonstrate that it has been doing business through the regular, systematic, and continuous provision of goods or services in the year 1998.

The second issue in this proceeding is whether the petitioner has established that the beneficiary has been or 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 petitioner initially provided an organizational chart indicating it employed six individuals including the beneficiary, a commissioned accountant, two independent sales persons and two coordinators working abroad. The petitioner also included a brief job description for six of these individuals. The petitioner also provided an IRS W-2 Form for each of six employees, including the beneficiary for the year 1997. The total wages for the employees other than the beneficiary was reported as \$17,030. The wages reported for the beneficiary was in the amount of \$20,300 for the year 1997. The petitioner also provided an unaudited payroll journal dated June 3, 1998 showing a total of seven employees, including the beneficiary. The payroll journal indicated that the total wages of the employees other than the beneficiary was \$10,860 for the first six months of 1998. According to the payroll journal, the beneficiary received \$19,426 during this time period.

In the petition, the petitioner described the beneficiary's job duties as developing a marketing plan to expand the petitioner's business. The petitioner described the beneficiary's duties for the foreign entity as the managing director who oversees the operation of the company and directs and supervises degreed persons. The petitioner also submitted copies of the Service's previous approvals of the beneficiary's L-1 classification.

The director stated in the notice of intent to deny that the parent company, [REDACTED], no longer employed the beneficiary and had not employed the beneficiary since June 6, 1998. The director's decision did not include this information in the final denial. It appears that the statement in the notice of intent to deny that indicated Meichuan was the parent company of the petitioner misidentified the parent company in this petition and was in error.

On appeal, counsel submits copies of 20 contracts purportedly signed by the beneficiary on behalf of Hubei Anpu, the petitioner's parent company during the time period from October 1992 to June of 1995. Counsel also submits an organizational chart for Hubei Anpu but does not designate the time period when the organizational chart was in effect. Counsel also submits other documentation to show [REDACTED] employed the beneficiary prior to the beneficiary entering the United States. Counsel asserts that the beneficiary was employed by the parent company in the instant case, namely Hubei Anpu, and confirms that Meichuan, Inc. never employed the beneficiary.

Counsel's assertion that [REDACTED] employed the beneficiary before she entered the United States is persuasive. The petitioner has submitted sufficient supporting documentation to allow this conclusion. However, the documentation provided does not support a conclusion that the beneficiary was employed in an executive or managerial capacity for [REDACTED]. The petitioner does not provide a comprehensive description of the beneficiary's

day-to-day duties for Hubei Anpu. The organizational chart provided is undated and in and of itself is insufficient to indicate that the beneficiary was acting in a managerial or executive capacity for Hubei Anpu. Likewise, the contracts purportedly signed by the beneficiary without a comprehensive description of the beneficiary's role in the foreign company, does not allow a conclusion that the beneficiary acted in a managerial or executive capacity for the foreign company for one continuous year in one of the three years preceding the application for admission into the United States.

Beyond the decision of the director on this issue, the petitioner has not provided evidence that the beneficiary's duties for the petitioner primarily involve acts that are executive or managerial in nature. The petitioner has not provided a comprehensive description of the beneficiary's day-to-day duties. The meager description provided essentially paraphrases one or two of the elements found in the regulation. It appears from the IRS tax forms provided by the petitioner that the beneficiary performs the duties that have allowed the petitioner to maintain minimum operations, if any operations at all. As noted in caselaw, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. Matter of Church Scientology International, 19 I&N Dec. 593, 604 (Comm. 1988). Given the indefinite description of the beneficiary's job duties for the petitioner, the petitioner has not established that the beneficiary has been employed or will be employed in a primarily managerial or executive capacity.

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.