



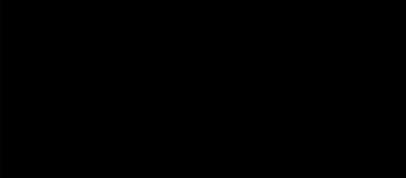
U.S. Department of Justice

Immigration and Naturalization Service

D7

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OFFICE OF ADMINISTRATIVE APPEALS
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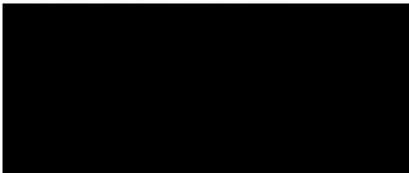


File: WAC 99 166 52818 Office: CALIFORNIA SERVICE CENTER Date: DEC 17 2001

IN RE: Petitioner [Redacted]
Beneficiary: [Redacted]

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 Conv

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 described as a business engaged in ocean transportation, cargo service and establishing shipping networks. The petitioner seeks to employ the beneficiary in the United States as its general manager. The director determined that the petitioner had not established a qualifying relationship with a foreign entity.

On appeal, the petitioner claims the director misinterpreted the evidence submitted and overlooked other 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.

The petitioner was incorporated in the state of California in March of 1999 and the petition was filed in May of 1999. The petition requests an L-1A nonimmigrant visa for the beneficiary in order to set up a new office for the petitioner in California. The petitioner qualifies under the new office definition in 8 C.F.R. 214.2(1)(1)(ii) that states in pertinent part that:

(F) New office means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

The issue in this proceeding is whether the petitioner has provided sufficient evidence to establish a qualifying relationship with a foreign entity and otherwise has complied with the requirements set forth in 8 C.F.R. 214.2(1)(3)(v).

8 C.F.R. 214.2(1)(3)(v) states that if a petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The petitioner initially submitted a cover letter with the following documents:

Winland Shipping & Enterprises Company's (Winland China) business license, balance sheet, income sheet, organizational chart, a business contract and photographs;

Documents relating to two subsidiaries of Winland China, Bestline Shipping Limited and Weihang Shipping Co., Ltd.; and

The beneficiary's certificate of USA assignment, verification of the beneficiary's employment, the

beneficiary's certificates of diploma and graduation and passport.

The director requested that the petitioner supply additional evidence that established a qualifying relationship between the petitioner and the foreign entity. The director also requested the petitioner provide evidence that it had secured physical premises in the United States. The director further requested evidence that established the size of the foreign entity's investment and ability to commence doing business in the United States. The director finally requested evidence that the beneficiary had been employed abroad, by a qualifying organization, in a managerial capacity for one continuous year of full-time employment within three years prior to the filing of the petition.

In reply, the petitioner submitted the following:

A stock certificate issued by the petitioner to Winland China, a business license indicating the ownership of Winland China, documentation indicating the ownership of Bestline Shipping Limited and copies of the petitioner's bank statements;

A letter purporting to set out the petitioner's business plan and the beneficiary's previous employment with the foreign entity as well as stating the purported investment in the United States;

A letter purporting to set out the beneficiary's duties with the petitioner;

A copy of the petitioner's business license, lease agreement for office space, and evidence of assets purchased for the petitioner;

A hiring plan;

Organizational charts for Winland China and the petitioner;

A letter explaining the source and reason for the petitioner's capitalization;

Voluminous documentation for one transaction regarding the delivery of diammonium phosphate;

A letter from the foreign company briefly outlining the beneficiary's duties for it in China.

The director determined that the record did not demonstrate that Winland China, the foreign entity, owned and controlled the petitioner. The director focussed on bank statements provided by

the petitioner that listed numerous deposits to the petitioner from organizations other than the parent company. The director questioned whether Bestline Shipping Limited was owned and controlled by Winland China and whether the transfer of funds from Bestline Shipping, Ltd., purportedly used for the capitalization of the petitioner, was made on behalf of Winland China.

On appeal, counsel asserts that the stock certificate and board minutes of the petitioner clearly establish that the petitioner is a wholly owned subsidiary of Winland China, the foreign entity in this case. Counsel also asserts, that Bestline Shipping Limited is owned by Winland China and submits a stock certificate and verification letters to support the assertion. Counsel also states that the transfer of funds to capitalize the petitioner is from the parent company, Winland China, and the transfer of funds was made through a subsidiary to lessen the delay in transferring funds from China. Counsel also indicates that the number of deposits to the petitioner from various organizations were actually payments of commissions paid to the petitioner for freight shipping and cargo services.

Counsel's assertion that the petitioner is a wholly owned subsidiary of Winland China is persuasive. However, the Associate Commissioner cannot find that the petitioner has otherwise complied with the requirements set out at 8 C.F.R. 214.2 (1)(3)(v) relating to new offices.

Beyond the decision of the director, the petitioner has not provided sufficient evidence of the beneficiary's employment as a manager or executive for one continuous year in the three years preceding the filing of this petition. The petitioner has provided only a vague description of the beneficiary's duties for the parent company in the position titled vice-general manager. The duties described essentially paraphrase the regulatory definition of manager and executive and provide no real understanding of the day-to-day activity of the beneficiary for the foreign company. Of further note, the organizational chart of the foreign company indicates that the beneficiary is an office manager in charge of two employees. This information is insufficient to establish the beneficiary was working in a managerial or executive capacity, as defined in Section 101(a)(44)(A) or (B), while employed by the foreign company.

In addition, the petitioner has not provided sufficient evidence that the petitioner will support an executive or managerial position within one year from the date of approval of the petition. The petitioner indicates that most of the work performed by the beneficiary is accomplished through telephone, email, fax and telex. The petitioner has secured limited physical premises for this reason. Though the petitioner states that it plans to hire individuals in the future, no concrete business plan has been provided. The petitioner only provides vague statements of hoping to enter into more shipping contracts. The petitioner

also has not provided a comprehensive description of the foreign entity's financial ability to remunerate the beneficiary and to commence doing business in the United States. The foreign entity's balance sheet and income statement are detailed in RMB rather than US dollars. These documents are not sufficient to explain how the foreign entity will be able to commence doing business in the United States on the scale that has been briefly described. The record, as presently constituted, does not evidence the ability of the petitioner to support a managerial or executive position within one year.

Of further note, the director requested detailed information on the above issues and the information was not forthcoming. 8 C.F.R. 103.2(b)(12) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." The record as presently constituted does not establish that the petitioner complied with the prerequisites set out in 8 C.F.R. 214.2 (1)(3)(v).

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.