



U.S. Department of Justice
Immigration and Naturalization Service

D7

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



File: EAC 00 023 50011 Office: VERMONT SERVICE CENTER

Date:

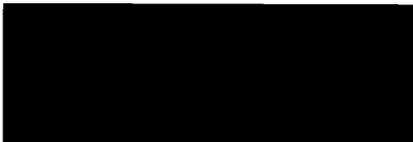
JAN 18 2001

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

Identifying information is placed to prevent clearly identifiable 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


Mary C. Mulrean, Acting 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 engaged in the import, export and wholesale of metal, minerals, ores and building supplies. It seeks authorization to employ the beneficiary temporarily in the United States as its manager of non-ferrous metals division. The director determined that the petitioner had not established that the beneficiary will be employed in a primarily managerial or executive capacity.

On appeal, counsel states that the petitioner has sufficient managerial capacity work available to sustain the services of another manager.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8U.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 was incorporated in 1982 and states that it is a subsidiary of [REDACTED]

[REDACTED] located in Beijing, China. The petitioner declares 120 employees and approximately \$20,897,515 in gross revenues. The petitioner seeks to employ the beneficiary for three years at a weekly salary of \$769.23.

The issue in this proceeding is whether the petitioner has established that the beneficiary 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
- iv. receives only general supervision or direction

from higher level executives, the board of directors, or stockholders of the organization.

The petitioner described the beneficiary's proposed job duties as follows:

In this position, [the beneficiary] has full authority and control of the tin and rare-earth product lines, such as, international trades and markets. He is also responsible for researches, business developments, products promotions, fairs exhibitions, sales campaigns, investment projects, joint venture operations, public and business relations; as well as having the power to make all managerial personnel decisions, leave authorizations, hires, fires, transfers and promotions. In addition, [the beneficiary] is in charge of planning, developing and implementing marketing and advertising policies, market strategies, advertising quality standards, operational guidelines, administrative procedures, market goals and objectives. He is also responsible for research market condition in worldwide markets, and to determine potential sales of CPI's commodities.

[The beneficiary's] other responsibilities are to establish research methodology and designs format for data gathering, such as, surveys, opinion polls, questionnaires, other competitors. In addition, [the beneficiary] is required to examine and analyze statistical data to forecast future market trends, prices, sales, methods of marketing, distributions customer preferences and buying habits. He is also required to attend board meetings in China in providing and updating the board members of tin and rare operations and markets.

In this capacity, [the beneficiary] has demonstrated his remarkable ability in tin and rare-earth management and putting together complicated projects and contract transactions. He has also shown professional abilities in solving business problems as well as excellency in organizational and administrative skills with a natural affinity for accuracy and attention to details. In addition, [the beneficiary] has the ability to establish good rapport and maintain excellent working relationships both within and outside the organization.

In his decision, the director determined that the non-ferrous metals division that the beneficiary would head has two employees, a deputy manager and a business coordinator. The director noted that the petitioner failed to establish that it had sufficient managerial capacity work to be performed to require the services of

another manager. The director therefore concluded that the petitioner failed to demonstrate that the beneficiary was employed in a managerial or executive capacity.

On appeal, counsel argues that:

The beneficiary, [REDACTED], will, upon his transfer, supervise the Deputy Manager, Mr. Ronald Ye, a U.S. citizen, and Business Coordinator, Mr. Shishang Ho, a U.S. citizen working within the Non-Ferrous Metals Division, who in turn direct and supervise the office clerk and the petitioner's subsidiaries middle-management.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The record does not establish that a majority of the beneficiary's duties will be managing or directing the management of the organization. The record indicates that a preponderance of the beneficiary's duties have been and will be directly performing the operations of the organization. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing nonqualifying duties. The fact remains that the description of the beneficiary's primary duties indicates that they are not in a qualifying managerial or executive capacity. It must be evident from the documentation submitted that the majority of the beneficiary's actual daily activities have been and will be managerial or executive in nature. The description of duties provided is too general to convey any understanding of exactly what the beneficiary will be doing on a daily basis. For this reason, the petition may not be approved.

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.