



U.S. Department of Justice

Immigration and Naturalization Service

DI

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

[Redacted]

File: EAC 99 068 53294 Office: Vermont Service Center Date:

JAN 18 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)

Public Entry

IN BEHALF OF PETITIONER:

[Redacted]

Identity... prevent clear... 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

[Signature]

M. C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was originally approved by the Director, Vermont Service Center. Upon further review, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke approval of the petition, and his reasons therefore. The director subsequently ordered that the approval of the petition be revoked. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a distributor of sporting goods. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary has been or will be employed in a primarily managerial or executive capacity.

On appeal, counsel submits additional documentation in support of the appeal.

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. 214.2(1)(14)(ii) states that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (1) (1) (ii) (H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The U.S. petitioner states that it was established in 1996 and that it is a subsidiary of [REDACTED] Company Limited. The petitioner declares six employees and \$3,688,054 in gross revenues.

At issue in this proceeding is whether 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:

"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:

"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.

In a letter dated December 29, 1997, the beneficiary's duties with the petitioning U.S. entity are described as follows:

[The beneficiary] has been employed as President of [REDACTED] Inc. since April 18, 1997. After entering the US on the L-1A visa which was obtained in Hong Kong on 2/21/97. In this capacity, he has been responsible for formulating and developing corporate policy and developing business objectives and goals. He directs the management of the organization. He directs and coordinates the formulation of financial programs including obtaining financing for the operation. He directs and oversees contract negotiations. He exercises wide latitude in discretionary decision-making with respect to all of the corporation's activities such as financial matters, employee matters, product selection and development, marketing, overall corporate governance and customer relationships. He will continue to perform the same job duties during the period of the extended petition.

In response to the Notice of Intent to Revoke, the petitioner submitted a letter describing the beneficiary's duties as follows:

As the President, and CEO, [the beneficiary] formulates and directs our overall business strategies, including marketing and sales, pricing, business financing, employee hiring, purchasing and product development including design patent development and is responsible in the strategic decision making in all these aspects of our business. He is also actively involved in the business development activities with Champs Sports, attending important meetings and negotiations with Champs executives both in USA and overseas, selecting factories for different products, approving hiring, negotiating and successfully obtaining the credit line from [REDACTED] Bank USA and overseeing my management of [REDACTED] USA operations and my implementation the business strategies formulated and (or) approved by [the beneficiary]. [The beneficiary] also directs, oversees and initiates the formulation of our tailor made in-house operating procedures for key customers like Champs Sports to ensure the customer will receive customized service they enjoy. He has the sole and final authority with regard to sales and purchase prices. We normally send out quotes in his name although the actual paper work is prepared by our Sales Manager. He also approves our purchase orders with our suppliers. In order to reduce operating costs, [the beneficiary] directed the standardization and automation program of making shipping documents, which I supervised and followed through.

The petitioner also submitted an organizational chart showing it employs six people, the beneficiary as president, a vice president and operations manager, a sales manager, an import coordinator, a market research analyst, and a financial controller/accountant.

The director found the petitioner had failed to demonstrate that the beneficiary has been and will be employed in a primarily managerial or executive capacity.

On appeal, the vice president of The Sports Authority states that the petitioner will be their sole vendor for free weights, and that he has "witnessed the beneficiary's outstanding performance and extensive experience in business management, international trade, and manufacturing from a department manager to the president of [REDACTED] (USA) Inc."

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 petitioner simply paraphrases the general definitions of manager and executive to lend credence to the beneficiary's responsibilities. However, this does not suffice, as it must be evident from the documentation

submitted that the majority of the beneficiary's actual daily activities has been and will be managerial or executive in nature. The petitioner has provided no comprehensive description of the beneficiary's duties to establish this. In fact, the description of duties provided is too general and vague to convey any understanding of exactly what the beneficiary does on a daily basis. Further, it has not been sufficiently demonstrated that the beneficiary will have a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing nonqualifying duties. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed in a primarily managerial or executive capacity. 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.