U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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[redacted]

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File: EAC 00 088 50340 Office: Vermont Service Center Date:

identification data deleted to prevent clearly unwarranted invasion of personal privacy

IN RE: Petitioner:
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:

[redacted]

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, an import/export company, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its manager of the investment and development department. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel argues that the beneficiary is employed in a primarily managerial or executive capacity.

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(l)(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 (l)(1)(ii)(G) of this section;
>
> (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(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 1982 and that it is a wholly-owned subsidiary of [redacted] and [redacted], located in Beijing, China. The petitioner declares eight employees and a gross annual income of approximately $40 million. It seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of $45,950.

At issue in this proceeding is whether the beneficiary has been and 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.

The petitioner submitted the following description of its organizational structure:

President
Vice President (Vacant)
Treasurer
Investment & Development Department
  Financial & Accounting Department
    CPA, local accounting firm
Operations Department
Vegetable Oil Department
  Grains Department

The petitioner submitted the following description of the beneficiary's duties:

1) participating in the preparation of overall investment plans and strategies of the company: 5 hours per week

2) coordinating among divisions with regard to the financing aspect of investment operations: 8 hours per week

3) interacting with the parent company regarding overall investment operations between the parent and subsidiaries: 6 hours per week;

4) rendering work assignments to and supervising work performance of subordinate employees: 5 hours per week

5) providing management service regarding various investment projects and development of new investment transactions: 10 hours per week;

6) participating in personnel management including the hiring and firing of employees: 1 hour per week;

7) reporting to the president and the board of directors with regard to the overall investment performance of the company: 5 hours per week.

In a letter dated March 2, 2000, the Service requested that the petitioner respond to the following:

> Submit a list of your United States employees identifying each employee by name and position title. In addition, submit a complete position description for each of your United States employees. Submit a breakdown of the number of hours devoted to each of the employee's job duties on a weekly basis, including one for the beneficiary.
>
> Submit the United States entity's organizational chart describing its managerial hierarchy and current staffing levels. This is best accomplished by indicating:
>
> -The current names of executive[s], manager(s), supervisor(s), the beneficiary's position in the chart:
>
> -The names of other existing employees within each department or subdivision, and,
>
> -Clearly indicate all existing employees to be under the beneficiary's supervision in the United States, including: names, job titles, brief job duties, and Nonimmigrant status (L-1, H-1B, etc.).

The petitioner resubmitted the above description of the beneficiary's duties. The petitioner listed seven employees by name, but failed to provide a description of their duties.

On appeal, the petitioner claims that the beneficiary is employed in a managerial or executive capacity. The petitioner states that it has not hired many local employees because the foreign entity has transferred its managerial employees to work for the U.S. entity.

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as participating in the preparation of overall investment plans and strategies, coordinating the finances of divisions, interacting with the parent company with regard to investment operations, and

providing management service regarding various investment projects, are without any context in which to reach a determination as to whether they would be qualifying. The significance of other duties such as rendering work assignments and supervising the work performance of subordinate employees and participating in personnel management is unclear since the beneficiary has only one subordinate employee who is also stated to be a manager. The use of the position title of "investment and development manager" is not sufficient.

The record contains insufficient evidence to demonstrate that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary has been or will be managing the organization, or managing a department, subdivision, function, or component of the company. The petitioner has not shown that the beneficiary has been or will be functioning at a senior level within an organizational hierarchy other than in position title.

Further, the petitioner's evidence is not sufficient in establishing that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing nonqualifying duties. The beneficiary has a single subordinate employee who is also stated to be a manager. Although requested, the petitioner has not submitted a description of the job duties of any of its employees. Further, the actual number of employees within the entire U.S. entity is unclear. The petitioner initially claimed to have eight employees. In response to a request for additional evidence, the petitioner submitted a list of seven employees. Forms W-2 for 1999 show that the petitioner has nine employees. These discrepancies have not been explained.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on 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).

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.