

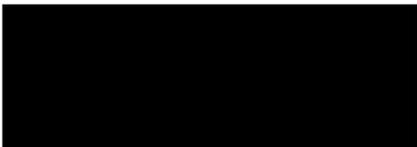


*[Handwritten signature]*

U.S. Department of Justice  
Immigration and Naturalization Service

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

**Public Copy**



**JUN 18 2001**

FILE: WAC-98-083-53914

OFFICE: California Service Center

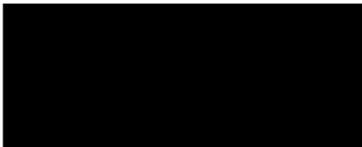
DATE:

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 USC 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



*identification data deleted to prevent clearly unwarranted 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 decision, 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]*  
for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center. A subsequent appeal was denied by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a company engaged in importing and exporting goods between China and the United States, and seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president.

The director determined that the petitioner failed to demonstrate that the beneficiary has been and will be employed in a primarily managerial or executive capacity. The director also determined that the petitioner had not demonstrated that the United States entity was "doing business" in the United States within the meaning of 8 C.F.R. 214.2(1)(1)(ii)(H). On appeal, the petitioner did not submit any new evidence or assign any error. The Associate Commissioner, Examinations, summarily dismissed that appeal.

In response, the petitioner submitted a motion to reopen. With that motion, the petitioner submitted various exhibits. The documents submitted included (1) photocopies of an unsigned, only partly legible, lease and cancelled checks, dated 1999 and 2000, purporting to show payments made by the petitioner to George Chang, whose relationship to the petitioner and the beneficiary is unclear, (2) photocopies of statements, dated during 1998, 1999, and 2000, of the petitioner's account at California Pacific Bank, (3) documents pertinent to the petitioner's tax liability and payments during 1999, (4) photocopies of documents pertinent to the petitioner's telephone bill during 1999 and 2000, (5) copies of invoices purporting to show installations of kitchen counter tops and vanities by the petitioner during 1998, 1999, and 2000, (6) a photocopy of a Form 100-ES and a cancelled check purporting to show that the petitioner, on March 7, 2000, made an estimated corporate tax payment, (7) photocopies of a Form 7004, a Form 8109 and a cancelled check, purporting to show that, on February 29, 2000, the petitioner made an estimated tax payment and requested a six month extension of the deadline for filing a tax return for the 2000 calendar year, (8) photocopies of a 1998 Form W-4 withholding certificate and a pay record for January, February and March of 1999, both purporting to show that the petitioner employed Shi-Jiang Chang during that period, (9) photocopies of checks purporting to show payments by the petitioner to the Franchise Tax Board during December of 1998 and April of 1999, (10) photocopies of checks purporting to show payments by the petitioner to the United States Treasury and the Employment Development Department during April of 1999, (11) photocopies of various invoices and receipts purporting to demonstrate that the petitioner purchased various items during 1999, and (12) an installment contract showing that the beneficiary financed the purchase of an automobile.

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.

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 did not directly address the finding of the director that the beneficiary's proposed employment in the United States had not been shown to be managerial or executive. However, on the motion, counsel did state that, in response to economic difficulties of the parent company, the beneficiary was accorded complete power, at some unstated time during 1998, to alter the business plan of the United States company in whatever way he deemed appropriate.

We note that the petition in this matter was filed on January 26, 1998. Accordingly, the petitioner must show that, on the date of the filing of the petition, the position contemplated for the beneficiary was managerial or executive within the meaning of Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A),

The petitioner's statement that, on some, unspecified, date during 1998, the parent company accorded the beneficiary the power to direct the business plan of the United States entity, does not demonstrate that the beneficiary had that power on the date of the filing of the petition. To the extent that she has addressed the issue at all, counsel has weakened the petitioner's position on the issue. Therefore, no reason exists to disturb the finding that the petitioner has failed to demonstrate that the beneficiary has been and will be employed in a primarily managerial or executive capacity.

The remaining issue is whether the petitioner has been doing business in the United States within the meaning of 8 C.F.R. 214.2(l)(1)(ii)(H). Counsel stated that the documents submitted with the motion, and described above, were provided in support of the motion to reopen, and for the proposition that the petitioner has been doing business, systematically and continuously, in the United States under the guidance of the beneficiary. However, as was noted above, the petition in this matter was filed on January 26, 1998. All of the documents submitted with the motion are dated after the application date. None of them appear to shed any light

on the course of the beneficiary's business on, or prior to, the date of the application. As such, they are not material to any matter at issue on the motion.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. INS v. Doherty, (Supra) at 323, citing INS v. Abudu, (Supra.) at 107-08. A party seeking to reopen a proceeding bears a "heavy burden." INS v. Abudu, (Supra.) at 110. The movant in the instant case has not sustained that burden.

The petitioner has submitted no new information which demonstrates that the beneficiary has been 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. The petitioner has failed to sustain that burden.

**ORDER:** The motion is dismissed.