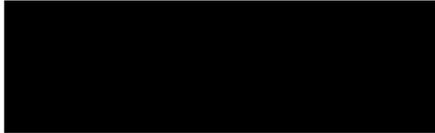




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U.S. Department of Justice  
Immigration and Naturalization Service

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



FILE: EAC-98-121-50408      OFFICE: Vermont Service Center      DATE: JUN 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 USC 1101(a)(15)(L)

**Public Copy**

IN BEHALF OF PETITIONER: Self-represented

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

*Myra L. Rose*  
for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was denied by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

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

On appeal, the petitioner argued that the beneficiary is employed in a primarily managerial or executive capacity. In dismissing the appeal, the Associate Commissioner affirmed the finding of the director. The Associate Commissioner also found that the petitioner had failed to demonstrate a qualifying relationship between the United States entity and the foreign entity, and noted inconsistencies in the various submissions in support of the petition.

On the motion, the petitioner argued that the beneficiary's position is managerial, and offered ostensible explanations of the contradictions cited by the director.

The first 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 describes the beneficiary's duties as follows:

1. Managing/supervising the petitioner's, Syno US, overall daily work and approving regular businesses;
2. Establishing and accomplishing goals and plans of the petitioner;
3. Promoting and selling the products of its affiliates; Establish regular, stable and long-term markets for the products;
4. Recruiting, reviewing and dismissal of employees;
5. Reporting progress to the General Manager and Board of its parent company, Tianchuang Corp.

6. Generating business and profits at the discretion of the position petitioned.

Most importantly, the position needs to use its own discretion to manage the company, to set the business fit into the whole plan of its parent company, and to direct and finalize business transactions.

In an annual work report dated January of 1998, the petitioner's organizational structure was described as follows:

President & General Manager: one person. Establish goal and plan, direct and supervise daily business and manager, signing final contracts, recruit and dismissal, etc..

Salesperson: two persons. Product sales and purchase, customer relations and products services, payments collecting.

Office Assistant: one person. Reception and office daily issues, simple daily bookkeeping.

Certified Public Accountant; one person. An adjunct position. Financial consulting and make monthly, quarterly and annual tax and other financial documents.

In response to a request for additional information, the beneficiary's duties were further described as follows:

The beneficiary is responsible for the overall work of the petitioner, and directly directs the work of the Sales Manager & Buyer, the Receptionist & Secretary and the Accountant. The beneficiary's current major duties include, but not exclusively:

1. Supervising the overall work

The main goal is set by the Board for this company is to sell the agriculture products manufactured by its overseas affiliates. As the top executive and manger the beneficiary supervises the overall works to accomplish the main goals. The beneficiary often gives each employee specific works and responsibilities. She gives goals and plans to Sales Manager & Buyer. The goals and plans are what products we need to sell or buy and at what price levels. She directs employees to arrange shipping, sampling, billing etc. She directs the Secretary and Accountant to finish what kind of paper works.

## 2. Establishing and accomplishing goals

As per market needs, the beneficiary sets annual plans and goals for the petitioner company. The plans and goals include how much garlic, horseradish and other agriculture products needs to be produced and how much sales could be accomplished in near future.

## 3. Markets Research & cooperation with overseas affiliates

The beneficiary needs to forecast the demands of the products and to communicate with overseas affiliates to reach smooth cooperation. The numbers of market forecasts and variations needs to inform timely to overseas affiliates to make manufacturing plans.

## 4. Final approval of business transactions

Business contracts are normally negotiated by Sales Manager and Buyer. The negotiations must be conducted under the supervision of the beneficiary and subject to the beneficiary's approval (signing) to be finally effective.

## 5. Customer relations

The company is specialized in Chinese agriculture products (garlic & horseradish) sales. In the terms of the manner of conducting business, it is an importer and wholesale business. Although it can reach approximately 2 million dollars of business in 1998, it mainly sells its products to about one dozen of customers in USA. This company supplies these US customers in a very regular, long-term and stable manner. Businesses between this company and each customer are conducted once or a few times a month in wholesales quantity. In order to have good relations and to be able to do business in a long-term stable manner. The beneficiary needs to arrange visiting customers 2-3 times a year to understand the customers needs. So we can supply them with better goods and keeps them loyal to our products.

## 6. Recruiting, reviewing and dismissal of employees

Due to the small size of this company, the recruiting, reviewing and dismissal of employees are directed handled by the beneficiary, the President and General Manager. Due to the nature of the business is import/export between China and USA, the beneficiary recruits employees who can fluently speak both Chinese

and English, and have some skills and capabilities in import/export business. Employees are evaluated annually on the day of anniversary and offered pay raises as per reviews.

7. Report to overseas parent company

As requirement, the beneficiary needs to write an annual work report to the Board of Tianchuang Corp., the overseas parent of the petitioner. The report will outline the progress and outcome of the past year. The report covers the numbers of sales and purchases, the profits summary, the mistakes made and why, lessons learned, market trends, customers new needs, potential opportunities & new markets and forecasts and plans for next year or longer. In addition, the beneficiary needs to report to and consult with the General Manager (CEO) and the Board on important issues, such as serious business loss, serious products quality problem which caused by the affiliates overseas.

8. Generating extra profits

Under right circumstances, the beneficiary has the discretion to conduct business which is not related to its overseas affiliate products. The purpose is maximize earnings without interfering and compromising the main goals. Currently the company has conducted some extra business in health products and electronic chips.

The petitioner also provided the following description of its employees and their duties.

  
President & General Manager: Report to the Board of Tianchuang Economy Development Corp.. Responsibilities please refer to A comprehensive Description of the Beneficiary's duties. A full-time 40 hour per week position.

  
Sales Manager & Lead Buyer. Report to the President & General manager. This position needs business capabilities and strong communication skills both in English and Chinese. Mr. Sun has a US business college degree. Responsibilities include (1) contacting customers and conducting sales; (2) regularly visiting customers and after sales service; (3) seeking

quotations for purchases; (4) concluding sales and purchases upon final approval by the President and General Manager. (5) directing the daily works of Sales & Purchase Assistant and Shipping & Receiving person. A full-time 40 hour per week position.

[REDACTED]

Receptionist & Secretary: Responsibilities include (1) receiving telephone calls and guest calls; (2) Making appointment; (3) daily bookkeeping and billing; (4) taking care of electricity, telephone and other charges. A full-time 40 hour per week position.

[REDACTED]

Shipping & Receiving Person: Report to the Sales Manager & Lead Buyer. Responsibilities include (1) contacting trucking companies to arrange delivery and pick-up operations as per instructions of the Sales Manager and Lead Buyer; (2) directing loading and offloading; (3) Signing the bills of shipping and receiving. A part-time 20 hour per week position.

[REDACTED]

Sales & Purchase Assistant; Report to the Sales & Lead Buyer. Miss Li holds a bachelor degree in Food Science. Responsibilities include (1) contacting customers and conducting sales & purchase as per instructions; (2) taking care the Sales and Purchases while the Sales Manager & Lead Buyer not available or busy; (3) making and preparing samples as per customers needs; (4) checking & examining samples and documents from other merchants before our purchasing. A part-time 20 hour per week position.

[REDACTED]

Accountant: This position needs to be a Certified Public Accountant (CPA). Responsibilities include (1) preparing paychecks; (2) preparing accounting report and tax forms. A part-time 4 hour per week position.

On the motion, the petitioner provided no new evidence, and cited no authority or precedent to establish that the decision of the Associate Commissioner was in error. The petitioner reiterated the argument that the beneficiary's position, as described in the petition and additional submissions, is managerial or executive.

We find that the petitioner's argument continues to be as unconvincing as it was previously. The information previously provided by the petitioner, though extensive, describes the beneficiary's duties only in abstract terms. Based on the evidence furnished, as was stated in the previous decision of the Associate Commissioner, the description of the beneficiary's duties is too general to demonstrate that those duties are managerial or executive. The petitioner has provided no reason for disturbing the director's finding that the beneficiary's position is not a managerial position and not an executive position.

Another issue in this proceeding is whether there is a qualifying relationship between the U.S. and foreign entities.

8 C.F.R. 214.2(l)(1)(ii)(G) states:

*Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

8 C.F.R. 214.2(l)(1)(ii)(I) states:

*Parent* means a firm, corporation, or other legal entity which has subsidiaries.

8 C.F.R. 214.2(l)(1)(ii)(J) states:

*Branch* means an operating division or office of the same organization housed in a different location.

8 C.F.R. 214.2(l)(1)(ii)(K) states:

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50

percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns directly or indirectly, less than half of the entity, but in fact controls the entity.

8 C.F.R. 214.2(l)(1)(ii)(L) states, in pertinent part:

*Affiliate* means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The Associate Commissioner noted that the petitioner claims to be a wholly-owned subsidiary of [REDACTED] Economy Development Corp., the foreign entity. In support of that contention, the petitioner submitted share certificate number two, which states that [REDACTED] Economy Development Corporation owns all 200 shares of Syno International (U.S.) Ltd., the petitioner. However, the share certificate is undated, and no record of share certificate number one was submitted. Further, the petitioner submitted a copy of the company's U.S. Corporation Income Tax Return, Schedule K, in which the petitioner stated, at questions four and five, that no individual, partnership, corporation, estate or trust owns, directly or indirectly, 50% or more of the corporation's voting stock. The corporate income tax return submitted by the petitioner appears to contradict the information the petitioner gave on the petition.

On motion, the petitioner stated that the information on the corporate income tax was an innocent error made by the company's accountant. The petitioner also stated that the absence of a date from share certificate number two was due to an innocent error by the company's law firm. The petitioner submitted no documentation of that version of events, nor did the petitioner provide an explanation as to the whereabouts of stock certificate number one.

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). The petitioner's explanation of the discrepancy between the information on the petition and that on the supporting documentation is not supported by independent objective evidence. The petitioner has

failed to demonstrate that a qualifying relationship exists between the United States entity and the foreign entity. For this reason, the petition may not be approved.

The remaining issue in this case concerns another inconsistency noted by the Associate Commissioner. In the petition, the petitioner claimed to be located at 207 Prospect Avenue in Maywood, New Jersey. On his 1997 Form 1040, Individual Income Tax Return, the beneficiary stated that 207 Prospect Avenue, Maywood, New Jersey is his home address.

On motion, the petitioner stated that both the petitioner's business offices and the beneficiary's residence are at 207 Prospect Avenue, but offered no independent objective evidence of that assertion. As was stated above, Matter of [REDACTED], states that this is insufficient to resolve such an inconsistency. This unresolved inconsistency diminishes the petitioner's credibility.

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 decision of the Associate Commissioner, dated July 27, 1999, is affirmed.