



U.S. Department of Justice

Immigration and Naturalization Service

DN

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



PUBLIC COPY

File: EAC 00 160 52475 Office: Vermont Service Center Date: **MAR - 7 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)

Identification card issued to prevent clearly unauthorized invasion of national territory

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

Robert P. Wiemann, 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, a real estate investment company, 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 had been or would be employed in a primarily managerial or executive capacity.

On appeal, the petitioner 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)(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 (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, a managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States.

The U.S. petitioner states that it was established in 1980 and that it is 72 per cent owned by [REDACTED] Import/Export Corporation ("China National"), located in Beijing, China. The petitioner declares three employees and a gross annual income of approximately \$581,309. It seeks to extend the petition's validity and the beneficiary's stay for three years at an annual salary of \$40,000.

At issue in this proceeding is whether the beneficiary has been and will be employed by the U.S. entity 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:

Mr. [REDACTED] is now overseeing the entire company. Under his supervision, there are one investment manager and one superintendent. Mr. [REDACTED] is responsible for overseeing the company's real estate investment, including the leasing of offices [sic] spaces in the building owned by our company; he also [is] responsible for exploring new investment opportunities, such as purchasing of real properties. Mr. [REDACTED] is in charge of the comanagement of all the real properties owned by our company. Mr. [REDACTED]'s role as President of our company is being the sole decision maker for and on behalf of our company in the investment business in the U.S.

Mr. [REDACTED] duties include: (1) formulate immediate and intermediate and long term investment policies; supervise the general business of the company, through the assistance of the investment manager; (2) set financial plans and annual capital budget reports for the Board of Directors; (3) finalize negotiations with banks for obtaining the most favorable financing needed in our company's investments and future investment plans; (4) exercise personnel management authority concerning hiring, discharging, promotion and transferring of subordinates; (5) communicate with members of the Board for the approval of various investment plans and related capital plans; (6) solicitation for more financial support from the parent Company; (7) work with commissioned real estate brokers, such as CB Richard Ellis, in negotiating and signing of leases for real property holding of our company.

Mr. Wang[,] as President of the company, has been and is currently involved in the critical executive decisions

and functions of the company and as such is essential of our company's business.

Mr. [REDACTED] is responsible for the supervision of the daily operation of the company, including signing of leases of the offices [sic] spaces owned by our company, servicing contracts with the Service companies concerning the up-keeping of the real properties and various contracts relating to capital improvements.

In a letter dated May 10, 2000, the Service requested that the petitioner respond to the following:

Submit a comprehensive description of the beneficiary's duties indicating how the beneficiary's duties have been and will be, managerial or executive in nature. For executive or managerial consideration, you must: (1) demonstrate the beneficiary functions at a senior level within an organizational hierarchy other than in position title, and (2) demonstrate the beneficiary has been and will be managing a subordinate staff of professional, managerial or supervisory personnel who will relieve him from performing non-qualifying duties, if appropriate.

In response, the petitioner submitted an organizational chart showing that it employs a president (the beneficiary), an investment manager, a commissioned real estate broker, and a superintendent. The petitioner essentially repeated the above description of the beneficiary's duties, and described the duties of its other employees as follows:

Investment Manager

- directing company's investment projects by analyzing economic activities and corporate financial statements;
- analyzing corporate operating statements prepared by outside accounting firms and directing business activities accordingly to maximize profits;
- exercising major authorities to control fiscal budget and corporate finance of the company;
- reviewing of all investment activities to advise the president of modification of company's position and progress toward established goals and policies; and
- reviewing and negotiating the terms of leases of the building owned by the company.

Superintendent

- assisting president and investment manager to prepare financial reports and other necessary records;

- responsibility for office inventory control and updating;
- coordinating the maintenance and repairs of the building owned by the company;
- coordinating rental billing and collection
- conducting general bookkeeping; and
- performing routine office activities.

The director found that the petitioner had submitted insufficient evidence to establish that the beneficiary has been or will be employed in a primarily managerial or executive capacity. In particular, the director noted that the record contains no evidence that the petitioner had ever paid a real estate agent for services rendered. The director also found that as the investment manager had been paid only \$2000 for one year of employment, the investment manager appeared, at best, to be a part-time employee.

On appeal, the petitioner again reiterates the above description of the beneficiary's duties, and asserts that the beneficiary supervises an investment manager and a superintendent. The petitioner submitted evidence that a real estate agent was paid a commission for his services.

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. Although the petitioner's descriptions are lengthy, there is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as overseeing the entire company, being responsible for exploring new investment opportunities; being the sole decision-maker, formulating investment policies; setting financial plans and budget reports; finalizing negotiations with banks to obtain financing; ; and working with commission real estate brokers, are without any context in which to reach a determination as to whether they would be qualifying. The significance of duties such as exercising personnel management authority concerning hiring, discharging, promoting and transferring subordinates has not been established. The beneficiary appears to have only one full-time subordinate, whose duties appear to be primarily collecting rent and supervising the maintenance of the building. The beneficiary does not appear to have hired, fired, or promoted any individuals. The use of the position title of "president" 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 petitioner claims that the beneficiary supervises an investment manager and a superintendent. The investment manager was paid only \$2,000 in 1999, and it is unclear how much of her time is devoted to working for the U.S. entity. Accordingly, the beneficiary's sole subordinate is, essentially, the superintendent, who is responsible for office inventory, coordinating the maintenance of the building, and coordinating rental billing and collection.

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.

Beyond the decision of the director, the petitioner has not established that the foreign entity is doing business. As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

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.