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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC 00 004 51017 Office: Vermont Service Center Date:

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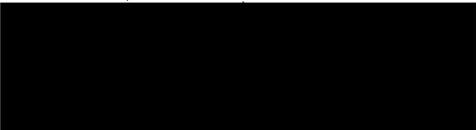
IN RE: Petitioner:
Beneficiary:



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 Copy

IN BEHALF OF PETITIONER:



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.

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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 company involved in international business, 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 would be employed in a primarily managerial or executive capacity.

On appeal, counsel argues that the Service "failed to consider all available evidence and applied incorrectly the part of the statute which is irrelevant to the instant petition."

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 was established in 1998 and states that it is a wholly-owned subsidiary of [REDACTED] Corp., located in Wuhan, China. The petitioner declares three employees and a gross annual income of approximately \$508,327. It seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of \$30,000.

At issue in this proceeding is whether the beneficiary 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 record contains a description of the beneficiary's duties in the proposed position in the United States as follows:

1. President, full time position, 40/h or more per week. The president will be fully responsible for the establishment of the new office, setting up of the operation policies and internal regulations for the operation of the new office (10 hours). The president will have the autonomy power to decide the business directions, allocate the financial sources transferred by the parent company within the United States, and decide the expenses of the company. President will also be in charge of the market survey and setting up a sales network for company's products in the US and Northern America, making decisions regarding hiring and firing employees for the new office (12 hours). Based on the information provided by the office staff, the president will select contractors and warehouse locations, execute documents, decide contract/products price (5 hours). The president will also conduct business negotiations, meetings with other business entities and government officials for business and public relationship purposes (15-20 hours), corresponding with the parent company regarding management and business (3 hours), supervising office staff's performance (5 hours).

The petitioner further describes the duties of the staff as follows:

2. Office Manager/Secretary, from part time to full time, from 20 hours per week to 35 hours per week. Duties and responsibilities include taking care of administration matters, such as filing forms, obtaining basic information requested by the president (10 hours), setting up project files (3-5 hours), responding to incoming calls, preparing documents for the projects and

other matters as indicated by the president and other office staff (15-20 hours), ordering office supplies and other necessities, contacting people for temporary help for the office (5 hours).

3. Project Manager, full time, 40 hours per week. Duties and responsibilities include conducting market survey, contacting and corresponding with business entities such as supplies and buyers (20 hours), inspecting in and out products/containers, executing shipping and banking documents (10-15 hours), maintaining and updating office equipment (3-5 hours), visiting supplier and buyers for post-sale services, or clarifying confusions and problems during the course of conducting business (5 hours).

In his decision, the director concluded that, although requested, the petitioner had not submitted complete position descriptions for the beneficiary and all of the individuals supervised by him, to include an hourly breakdown of their duties on a weekly basis. The director further concluded that the abbreviated position descriptions for the other two staff members did not convincingly demonstrate the claimed managerial nature of their duties.

On appeal, the petitioner submits position descriptions for the following employees:

1. [REDACTED] President

Establishes the policies and goals with respect to the financing of the purchase of goods, determining terms of payment, increasing cash flow. Confers with the Board of Directors of the parent company in order to establish joint financial strategies. Directs day-to-day financial operations of the company. Manages financial transactions, confers with bank executives, negotiates credit agreements and letters of credit on behalf of the company.

Mr. [REDACTED] devotes approximately 15 hours a week to these executive duties.

Mr. [REDACTED] oversees the sales of chemical products produced by, or with the participation of, the parent company. The negotiations regarding the distribution of the products usually take place at the executive level. Thus, Mr. Wang develops our general policy for negotiating the marketing contracts, participates in negotiations, makes decisions and executes contracts based upon his decisions.

Mr. [REDACTED] devotes approximately 20 hours a week to these executive duties.

Mr. [REDACTED] supervises the development of joint projects between the U.S. subsidiary and its U.S. partners. Rixin International is currently beginning its retail operations, and Mr. [REDACTED] is involved in hiring new employees, reviewing and approving purchase agreements, supervising advertising campaign.

Mr. [REDACTED] devotes approximately 10 hours a week to these executive duties.

Mr. [REDACTED] directs miscellaneous operations. In our company, an executive is responsible for monitoring miscellaneous office operations, such as billing, collection, office management, correspondence and the like. Mr. Wang directs and supervises these activities performed by the clerical staff and devotes approximately 5 hours a week to these duties.

2. [REDACTED] Vice-President

Ms. [REDACTED] is a part-time Vice-President who spends most of her time overseas. She manages and oversees European marketing activities of [REDACTED] International. She devotes approximately 20 hours a week to these duties. While in the United States, she oversees investments into [REDACTED] projects from U.S. entities. She devotes approximately 5-10 hours a week to these duties. Another 10-15 hours a week she spends overseeing company's relationship with Chinese government authorities, such as customs, export control and quality control entities, and shipping companies. She is authorized to make any decisions with respect to marketing activities of the company and confers only with President, to whom she directly reports.

3. [REDACTED] Sales Coordinator

Inspects inventories, conducts market surveys supervises warehouse personnel. Devotes approximately 20 hours a week to these duties. Prepares purchase orders, prepares shipping documents, arranges for insurance, handles claims, contacts customers regarding transportation and customs arrangements. Devotes approximately 20 hours a week to these duties. Reports to President.

4. [REDACTED] Secretary/office Manager

Assists executives in organizing office work and coordinating interaction among the departments. Handles correspondence, monitors office expenses, schedules meetings, prepares draft letters, updates clients' database. Devotes approximately 30-40 hours a week to these duties. Reports to President.

5. Warehouse employees (part-time and full-time)

Stock merchandise, load and unload containers, inspect apparent damages. Devote 20-40 hours a week to these duties. Report to Sales Coordinator.

The petitioner states that it employs outside professionals such as accountant, lawyers, and advertising consultants to assist in coordinating the business. The petitioner further states that once the retail operation reaches its projected volume, additional staff will be hired.

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 establishing policies and goals, increasing cash flow, conferring with the board of directors of the parent company to establish joint financial goals, managing financial transactions, and conferring with bank executives, are without any context in which to reach a determination as to whether they would be qualifying. Other duties such as monitoring miscellaneous office operations such as billing, collection, office management, and correspondence, have not been demonstrated to be managerial or executive in nature. 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 her from performing nonqualifying duties. The petitioner submitted evidence that the president and the vice president are the only full-time employees. The part-time staff consist of a sales coordinator, a secretary, and various warehouse

employees. There are no other professional, managerial, or supervisory personnel.

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.