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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 99 211 54005 Office: Vermont Service Center Date:

IN RE: Petitioner:
Beneficiary:



MAR 12 2001

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:



Public Copy

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

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prevent identity and arranged
in accordance with privacy

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 that serves as an outlet for the manufacture and sale of up-scale and medium scale furniture, 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 had been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel argues that the decision of the center director is "impermissibly vague as well as erroneous on the facts and law."

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 1996 and that it is a wholly-owned subsidiary of [REDACTED] Ltd., located in China. The petitioner declares nine employees and a gross annual income of approximately \$3.2 million. It seeks to extend the petition's validity and the beneficiary's stay for three years at an annual salary of \$45,000.

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 describes the beneficiary's duties as follows:

[The beneficiary] serves as the President and General Manager. In this position, he is responsible for establishing and carrying out company policy; supervising the daily activity of the company through our Vice President and Assistant General Manager; serving as the chief representative of Beijing-China in the United States and dealing with senior management of our U.S. clientele. [The beneficiary] also reviews and approves all contracts, making changes where required, and all marketing and sales plans submitted by the Marketing Manager. Finally, [the beneficiary] negotiates long and short term financing.

In a letter dated August 9, 1999, the Service requested that the petitioner respond to the following:

Submit a complete position description for all of your employees in the United States, including one for the beneficiary's position. Submit a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis.

Submit a complete copy of your Form 941, Employer's Quarterly Tax Return, for the first two quarters of 1999, to include the page that lists your employees by name.

You have submitted copies of various Form I-9's. However, these documents were not fully executed. Therefore, the eligibility of your employees for employment in the United States cannot be determined.

Submit a copy of your fully executed Form I-9's for all of your employees in the United States.

If the company has used contractors rather than employees to perform any functions during 1998 and 1999, submit evidence documenting the number of contractors utilized, the wages paid, and the duties performed.

In response to the request for additional information, the following position descriptions were described as follows:

(1) [REDACTED] President

Directs the operations of the company.
Plans, develops and establishes overall policies and objectives of company in accordance with directives of the Board of Directors of parent company.

Supervises negotiations of all contracts, approving terms and conditions.

Deals with senior executives of clients and suppliers.

Approves all personnel decisions, including hiring, firing, promotions, and assignments. Reports to parent company in China.

Supervises activities of Marketing Manager.

Reviews and approves all marketing and sales plans submitted by Marketing Manager.

Formulates financial strategies to maximize profitability and increase productivity.

Reviews business activity reports and financial statements to determine progress in obtaining goals and objectives of company.

Works 45-60 hours per week reforming above duties.

(2) [REDACTED] Import/Export Manager

Coordinates import and export activities between client orders and factory production.

Supervises documentation for export license.

Coordinates shipping and preparation of import documents with customs brokers.

Negotiates with shippers for shipping fees and schedules.

Prepares business activity reports.

Works 45-50 hours per week performing above duties.

(3) [REDACTED] Corporate Secretary/Office Manager

Administers to daily office operations.

Coordinates communication between U.S. and Chinese operations.

Performs duties of President in his absence, including check signing.

Approves orders for office supplies and equipment.

Works 40-50 hours per week performing above duties.

(4) [REDACTED] Accountant

Prepares all financial documents and reports, including accounts receivable and accounts payable, payroll, quarterly and yearly tax reports, financial reports and bank reconciliation.

Works 40-45 hours per week performing duties.

(5) [REDACTED] Assistant Export/Import Manager.

Assists Import/Export Manager in performance of duties.

Supervise warehouse workers.

Deals with transportation companies to insure proper delivery of goods.

Works 40 hour week performing duties.

(6) [REDACTED] Assistant Office Manager.

Assists Office Manager in performance of her duties.

Contacts clients.

Handles inquiries from clients and vendors.

Orders office supplies.

Handles files.

Works 40 hour per week performing duties.

On appeal, counsel argues that:

The job duties performed by the beneficiary are clearly of an executive/managerial nature. Besides directing the overall operations of the company, the beneficiary approves all personnel decisions, formulates financial strategy, establishes overall company policy and objectives, reports only to the Board of Directors and senior management of its parent company and supervises the activities of a middle level manager (Import/Export Manager) and a professional (Accountant).

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. Although the petitioner's descriptions are lengthy, they are also repetitive, and there is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as supervising the daily activity of the company, establishing and carrying out company policy, dealing with senior management of the U.S. clientele, and reviewing and approving all contracts, are without any context in which to reach a determination as to whether they would be qualifying. Other duties such as formulating financial strategies, and reviewing business activity reports, have not been demonstrated to be managerial or executive in nature. The use of the position title of "president and general 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. 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.