

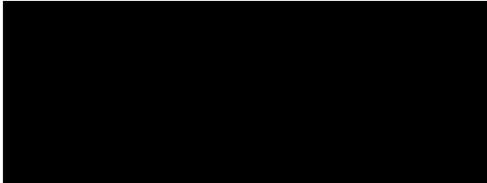


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U.S. Department of Justice

Immigration and Naturalization Service

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



PUBLIC COPY

File: WAC 00 045 50838 Office: CALIFORNIA SERVICE CENTER Date: 15 NOV 2001

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)

IN BEHALF OF PETITIONER:



Identifying 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 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. Weimann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as an import and export company specializing in oil drilling equipment. The petitioner seeks to employ the beneficiary in the United States as its sales manager. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, the petitioner disagrees with the director's decision and re-submits tax returns and an organizational chart of the United States entity. Counsel asserts that the petitioner will employ a reasonable supporting staff once the beneficiary's L-1A status is approved.

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(1)(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 (1)(1)(ii)(G) of this section.

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

The issue in this proceeding is whether the petitioner has established that 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:

The term "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:

The term "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

iii. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner is a California corporation incorporated in 1991. It appears to be a wholly owned subsidiary of a Chinese corporation. In the petition, the petitioner indicated that it was replacing an individual whose L-1A status was expiring and who was returning to the parent company in China. The petitioner

stated its intent was to hire the beneficiary of this petition as the replacement of the reassigned individual.

The petitioner described the beneficiary's job duties as sales manager and the general manager of the Houston office. The petitioner indicated that the beneficiary's responsibilities included marketing the sales program, reviewing market analyses, directing local technicians and technicians sent by the parent company, representing the petitioner at trade shows, analyzing and controlling expenditures, assisting in the preparation of training manuals, hiring and firing independent sales representatives, and commuting to the Houston office to direct the sales activities at that office. The organizational chart submitted by the petitioner indicated that the sales manager supervised two sales engineers and a secretary.

The director requested additional information regarding the qualifying relationship between the United States entity and the foreign entity. In addition, the director requested that the petitioner provide the names of all the executives, managers and supervisors of the company, the number of employees and the job duties of the employees under the supervision of the beneficiary.

In response, the petitioner submitted the requested information with brief descriptions of the job duties of the employees of the company.

The director determined that the record did not demonstrate that the beneficiary would be primarily managing or directing a function of the organization, or managing a department, subdivision, function, or component of the company. The director also found that the beneficiary would not be operating at a senior level position within an organizational hierarchy. The director further found that the beneficiary would not be managing a subordinate staff of professional, managerial, or supervisory personnel who would relieve him from performing non-qualifying duties.

On appeal, counsel re-submits an organizational chart for the petitioner and the 1997 and 1998 corporate tax returns demonstrating the sales volume of the company.

On review, the petitioner has not provided sufficient information to demonstrate that the beneficiary will be directing the management of the organization or a major component or function of the organization. There is also insufficient information in the record to conclude that the beneficiary will be managing the organization or a department, subdivision, function, or component of the organization. The petitioner provides no information describing the daily activities of the beneficiary. The description of the beneficiary's job duties is vague and general in nature, essentially serving to paraphrase the elements of the regulatory definition of managerial and executive capacity. There is no information provided describing the beneficiary's duties at

the Houston office. Given the lack of concrete information, the record does not support a conclusion that the beneficiary is directing the management of the organization or managing the organization or a department or subdivision of the organization.

In addition, the petitioner has not provided sufficient information to show that the beneficiary will supervise and control the work of other supervisory, professional, or managerial employees. The job duties of the three individuals under the proposed beneficiary's supervision are not professional in nature. Section 101(a)(32) of the Act states that the term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers. In this case, the sales engineers are involved in import coordination, following up on customer's orders and sales service coordination. These duties do not appear to relate to engineering duties but instead appear sales related. The title, sales engineer, is not sufficient to place an individual with that title in the professional category. It appears, at most, the beneficiary will be acting as a first-line supervisor to non-professional employees. Again, this information only serves to emphasize that the beneficiary will not be acting in a managerial capacity.

Finally, the record as presently constituted does not demonstrate the petitioner has sufficient staff to relieve the beneficiary from performing non-qualifying duties. At the time the petition was filed the petitioner had been in business for nine years. Counsel's assertion that the lack of a reasonable supporting staff was due to the wait for approval of the beneficiary's petition cannot be used to indicate that the petitioner presently can support a position that is managerial or executive in nature. 8 C.F.R. 214.2(1)(3)(v)(C) allows the United States entity one year within the date of approval of the petition to support an executive or managerial position. In the case at hand, the petitioner has not provided sufficient evidence to demonstrate that it can currently support a managerial or executive position.

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.