

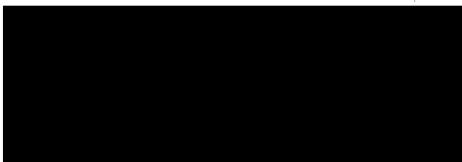


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U.S. Department of Justice

Immigration and Naturalization Service

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



**PUBLIC COPY**

File: WAC 99 088 50252 Office: CALIFORNIA SERVICE CENTER Date: 15 NOV 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)

IN BEHALF OF PETITIONER:  
[Redacted]

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 electronic goods. 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 seeks to clarify the number of employees of the petitioner and submits evidence to support the duties and responsibilities of the beneficiary.

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 1995. It appears to be a wholly owned subsidiary of a Chinese corporation re-organized in 1995 from direct Chinese governmental control. In the petition, the petitioner indicated that it was reassigning an individual whose L-1A status was expiring 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 corporate secretary. The petitioner indicated that the beneficiary's responsibilities as sales manager included "the marketing and production of the electronic products" produced by the parent company and "to establish a national marketing network to expand the exposure of [the petitioner] in the United States." The petitioner included an organizational chart with the petition showing that it employed four individuals. The organizational chart indicated that the sales manager did not supervise any employees.

The director determined that the record did not demonstrate that the beneficiary would be primarily managing or directing a function of the organization or that the beneficiary's function was essential to the organization. The director also found that the beneficiary would not be operating at a senior level position within the organization.

On appeal, counsel submits a revised organizational chart for the petitioner, the resume of a newly hired marketing consultant and a list of sales representatives. Counsel provides no additional description of the beneficiary's duties. Counsel requests that the petition be given favorable consideration based on the new evidence provided.

On review, the petitioner has provided insufficient evidence to show that the beneficiary will be directing the management of the organization or a major component or function of the organization. The petitioner provides no information describing the daily activities of the beneficiary. Given this lack of information, the record does not support a conclusion that the beneficiary's duties are executive in nature other than in position title.

In addition, the petitioner has provided insufficient information to show that the beneficiary will supervise and control the work of other supervisory, professional, or managerial employees. Counsel provides a revised organizational chart to support the beneficiary's claimed duties and responsibilities. The revised organizational chart indicates that the individual in the sales manager position is responsible for supervising three employees. As noted above, the original organizational chart indicated that the sales manager did not supervise any employees. Counsel provides no supporting evidence for this revision. Counsel's statement that the petitioner had confused the issue by placing the same name in various positions on the original organizational chart and now on appeal is making a good faith attempt to delineate the duties and responsibilities of its employees is not supported by the evidence. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, it is incumbent upon 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 record with these inconsistencies cannot be used to support a finding that the beneficiary will supervise and control the work of other supervisory, professional, or managerial employees.

Finally, the petitioner has provided insufficient information to demonstrate that the beneficiary will manage the organization, department, subdivision, function, or component of the organization. Again, the lack of description of the beneficiary's actual job duties cannot lead to a finding that the beneficiary is acting as a manager other than in position title.

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.