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U.S. Department of Homeland Security
Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, DC 20536



DEC 12 2003

File: EAC 02 043 53882 Office: VERMONT SERVICE CENTER Date:

ON 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)

ON BEHALF OF PETITIONER: SELF REPRESENTED

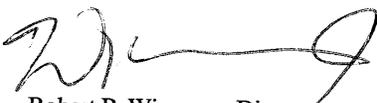
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

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prevent identity information
invasion of personal privacy

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an import/export company that seeks to employ the beneficiary temporarily in the United States as its general manager for a period of one year. The director determined that the petitioner had not secured adequate premises in which to conduct business. The director also determined the petitioner had not established that the beneficiary had been employed in a primarily managerial or executive capacity. The director also was not convinced that the intended United States operation, within one year of the approval of the petition, would support an executive or managerial position.

On appeal, the petitioner indicates that it made a mistake on the lease that it previously submitted. The petitioner submits a new lease and notary statement to correct their error along with an "ownership contract of title deed for land" for property owned by Hongkong Foodstuff Industry Co. Ltd. abroad. The petitioner submits documents including three W-2 wage and tax statements for 2001 for persons employed by the petitioning company, a shareholders agreement for a firm named "Huang Xinya & Cialtda-Me" that was established in 1993 in Argentina and a business plan showing milestones for Kimtex Inc. from April 25, 2002 through September 26, 2003. The petitioner also submits three documents under the letterhead "Hong Kong Foodstuff Industry Co. Ltd. Huang Xinya & Cialtda-Me." The first is entitled "LIST OF BOARD OF DIRECTORS OF PARENT COMPANY CORRECTION STATEMENT" and the second is entitled "MANAGEMENT STRUCTURE." The third document is a certification of the job duties of the beneficiary at the parent company abroad since 1993. The petitioner then submits an appointment document, a plan concerning the purchasing of machines and a business professionals recruitment plan.

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.

The regulations at 8 C.F.R. § 214.2(1)(3) state 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 petitioner, a New York corporation, was established on August 1, 2001. The petition was filed on November 21, 2001. The petitioner requests an L-1A nonimmigrant visa for the beneficiary so she may begin operations in the United States.

The United States entity qualifies under the new office definition at 8 C.F.R. § 214.2(1)(1)(ii) that states as follows:

(F) New office means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

Regulations at 8 C.F.R. § 214.2(1)(3)(v) state that if a petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

- (3) The organizational structure of the foreign entity.

The director determined that the petitioner had not established that the intended United States operation, within one year of the approval of the petition, would support an executive or managerial position. On appeal, the petitioner has not addressed this issue to overcome the finding of the director. Therefore, the petition may not be approved for this reason.

The next issue to be addressed in this proceeding is whether the petitioner has provided evidence to demonstrate that sufficient physical premises were secured to house the new office.

The petition was filed on November 21, 2001. To establish that it has obtained the required physical premises, the petitioner submits a correction statement and a revised lease sworn to on April 4, 2002 for premises at 158-28 73 Ave., Fresh Meadow, New York. In this case, the petitioner must establish eligibility at the time of filing; See 8 C.F.R. § 103.2(b)(12); *Matter of Izummi*, 22 I&N Dec. 169 (AAO 1998). The petitioner has not demonstrated that it had secured adequate premises in which to conduct business at the time of filing.

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

The next issue in this proceeding is whether the petitioner has established that the beneficiary has been employed abroad for one continuous year within the three years preceding the filing of the petition in a primarily managerial or executive capacity by a qualifying organization.

The petition lists the beneficiary's job duties abroad as follows:

As vice general manager in parent co. and as president in branch co. in charge of all the import.

The record contains the following "qualification of beneficiary" statement outlining her duties abroad as follows:

The beneficiary, Ms Huang Xin Ya has been employed in Parent Company as vice General Manager and President of Hong Kong II (Branch chain story) since 1993. She is also as one of the company top executives as Member of Board of Directors of Parent Company and one of founder in 1993, with the focus on supervising financial Dept., and welfare Dept. Ms Huang has distinguished her organizing, managerial competence and the sense of doing international business, which has contributed a lot to the establishment of successful partnership with foreign companies during the service in Parent Company for previous years.

On appeal, the petitioner submits a letter dated March 21, 2002 outlining the duties of the beneficiary abroad as follows:

As Vice General Manager of Hongkong Foodstuff Industry Co. Ltd., and President of Huang Xinya & Cialtda-Me, Ms. Huang Xinya has the responsibilities as follows:

In charge of personnel affairs such as recruiting, interviewing, training the employees, evaluating their performance & working attitude, responsible for their transfer within the corporation framework, or to other companies under the holding of company, giving reports to the general manager even the chairman about their promotion or demotion, raise or deduction of salaries and bonuses, supervising the changing of salary lists;

In charge of administration and management, such as administrative enforcement, and company infrastructure; pluck up the working efficiency, and increase the working morale.

In charge of domestic and international marketing, organizing, managerial competence sense of doing international business, designing strategies, policies and important decisions for business and personnel management, reading and listening to the executives reports, directing, checking the performance of staff directors and realizing the company goal through the concrete efforts by the officers and workers.

It is noted that the parent company of the United States based petitioning entity is listed as Hongkong Foodstuff Industry Co. Ltd. on the visa petition. The company Huang Xinya & Cialtda-Me is evidently an enterprise located in New York that is 99% owned by the beneficiary.

In this case, it is determined that record contains insufficient evidence to demonstrate that the beneficiary has been acting in a managerial or executive capacity abroad. The Service is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title. For this additional 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.