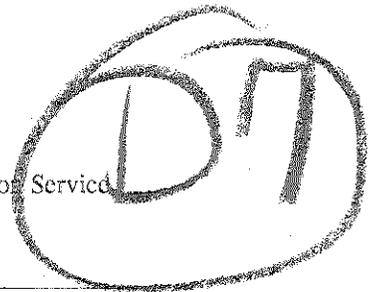


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U.S. Department of Justice
Immigration and Naturalization Service



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



File: WAC-98-017-53384 Office: Texas Service Center Date: JAN 17 2003

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]

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 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter was reopened and denied again by the Center Director and presently is before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as an "export medical supply and investment" company. It seeks to extend the beneficiary's temporarily employment in the United States as its 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 asserts that the "beneficiary is serving in a management capacity and he himself is not engaged primarily in the day-to-day operations of the business."

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 United States petitioner was incorporated in 1994 and claims that it is a wholly-owned subsidiary of the overseas company, [REDACTED] located in Shenyang, China. The petitioner declares five employees and over \$806,000 in gross annual revenues. The petitioner seeks to extend the beneficiary's period of employment for three years at an annual salary of \$30,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be employed primarily in a

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

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

In a letter accompanying the petition, the petitioner stated that the beneficiary had been "employed by our company as General Manager, a position involving executive functions." The petitioner summarized the beneficiary's duties as:

Set up policy and develop strategies to implement directive from corporate headquarters. Direct and coordinate promotion of products to develop new markets. Analyze financial condition to determine in which reduction can be made and allocate operating budget. Review activity, operating and sales reports to make proper change in operations.

The petitioner provided copies of its "Employer's Quarterly Reports" to the Texas Employment Commission covering the periods between the first quarter of 1996 through the second quarter of 1997. These documents reveal that the company had two or less employees for five months during that time period, three employees for eight months during that time period, and five employees for five months during that time period.

Pursuant to a notice dated January 5, 1998, the petitioner was requested to submit documentation identifying company employees and detailing their specific job descriptions. The petitioner failed to provide the requested documentation and the director denied the petition on June 16, 1998.

On January 18, 2001, the Center Director reopened the case and provided the petitioner with another opportunity to submit the requested documentation. In response, the petitioner offered copies of numerous sales and shipping invoices. The petitioner also provided copies of pay-stubs from October, November, and December in 2000 as well as an organizational chart listing the beneficiary as the company's vice general manager.

The director determined that the petitioner had failed to demonstrate that the beneficiary was to be employed in a primarily managerial or executive capacity and again denied the petition on June 25, 2001. On appeal, counsel explains that the beneficiary "adjust[ed] the size of the staff for various periods to achieve the most efficient use of manpower." Counsel asserts that "the beneficiary's action of increasing or decreasing the size of the staff is intrinsic to his responsibility as the general manager and that such action is consistent with the position definition stated in the CFR and the job description contained in the petition."

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary will be employed in a primarily managerial or executive capacity. The fact that an individual possesses an executive or managerial title does not establish *prima facie* eligibility for classification as a manager

or executive within the meaning of section 101(a)(44)(A) and (B) of the Act. The Service must first look to the petitioner's description of the beneficiary's job duties and the evidence submitted in support of the claimed duties.

Counsel, on appeal, asserts that "the day-to-day operations [of the business] are conducted by two managers, namely the sales manager and the office manager, who are under [the beneficiary's] supervision and control." However, despite two Service requests for information detailing the identities and duties of other company employees, the petitioner has failed to provide any of the requested evidence. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. 103.2(b)(14). Furthermore, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

While counsel contends that the day-to-day operations of the company are performed "by two managers" under the beneficiary's supervision, the petitioner's "Employer's Quarterly Reports" indicate that for significant periods of time the company employed just two individuals: the beneficiary (as vice general manager) and a general manager. Counsel failed to explain who was performing the day-to-day tasks of the company during the extended periods when the beneficiary was the most junior employee of the petitioning company. An employee who performs the tasks necessary to provide a company's services is not considered to be employed in a managerial or executive capacity. Matter of Church Scientology International, 19 I&N Dec. 593, 604 (Comm. 1988).

The evidence does not demonstrate that the beneficiary's primary duties will be directing the management of the organization; instead, it appears that a sizable percentage of his time will be spent performing the petitioner's services in trading with its customers and suppliers. Nor does the record support a conclusion that the beneficiary primarily manages an essential function within the organization and functions at a senior level in an organizational hierarchy on a day-to-day basis. Based on the record of proceeding as constituted, the petitioner has failed to demonstrate that the beneficiary will be employed primarily in a qualifying 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.