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

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass. Ave., 3rd Floor  
Washington, D.C. 20536



D7

File: WAC 01 151 51433 Office: CALIFORNIA SERVICE CENTER

Date: JUL 17 2003

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: Self-represented

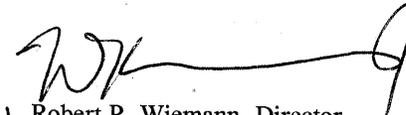
**INSTRUCTIONS:**

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 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 Bureau of Citizenship and Immigration Services (Bureau) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is an importer and wholesaler of ginkgo biloba extract and bee products. It seeks to employ the beneficiary temporarily in the United States as president and chief executive officer (CEO) of its new office. The director determined that the petitioner had not demonstrated that a qualifying relationship exists between the U.S. entity and the foreign corporation.

On appeal, the petitioner submits a brief asserting that it has a qualifying relationship with a foreign organization. Additional documentation is submitted in support of the petitioner's claim.

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.

8 C.F.R. § 214.2(1)(3)(v) states that if the 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.

At issue in this proceeding is whether a qualifying relationship exists between the U.S. petitioner and a foreign entity.

8 C.F.R. § 214.2(1)(1)(ii)(G) states:

*Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

8 C.F.R. § 214.2(1)(1)(ii)(I) states:

*Parent* means a firm, corporation, or other legal entity which has subsidiaries.

8 C.F.R. § 214.2(1)(1)(ii)(J) states:

*Branch* means an operation division or office of the same organization housed in a different location.

8 C.F.R. § 214.2(1)(1)(ii)(K) states:

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

8 C.F.R. § 214.2(1)(1)(ii)(L) states, in pertinent part:

*Affiliate* means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner claims that it is a wholly-owned subsidiary of [REDACTED] located in [REDACTED]. The petitioner seeks to employ the beneficiary in the United States for three years at a salary of \$2,500 per month.

In support of the petition, the petitioner submitted a statement explaining that it is wholly owned by the above-named Chinese entity. The petitioner's stock transfer ledger reflected the issuance of 60,000 shares of its stock, in the amount of \$60,000, to the claimed parent entity.

On May 17, 2001 the director sent the petitioner a notice requesting additional evidence, including proof of stock purchase to show that the foreign parent company actually paid for the U.S. entity. The notice specified that the petitioner should include copies of the original wire transfers from the parent company, and any other evidence detailing monetary amounts in connection with the stock purchase.

In response to the above request, the petitioner submitted the following documents:

- 1) Petitioner's bank statement from East West Bank indicating that as of August 30, 2000,

the petitioner had \$60,000 in its business checking account;

- 2) [REDACTED] notifications of wire transfers to [REDACTED] by the following orders: [REDACTED] from the [REDACTED] in Florida in the amount of \$10,057.11, and [REDACTED] from [REDACTED] in the amount of \$15,990;
- 3) [REDACTED] notifications of wire transfers to Ying Wei Chao, the beneficiary, by the following orders: [REDACTED] Ltd. from Bank of China in New York City in the amount of \$17,385, Herba Natural Products, Inc. from the same bank in the amount of \$11,750, and [REDACTED] from Bank of America in New York City in the amount of \$12,080;
- 4) Purchase invoices indicating the following purchases: R&T Pty, Ltd. of Australia in the amount of \$10,075; Kwok Shing Ent., Ltd. in the amount of \$17,400; Herba Natural Products, Inc. in the amount of \$11,750; Maruei Trading, Ltd. in the amount of \$16,000; and T.C. Unicorn, Ltd. in the amount of \$12,096. All invoices show the overseas entity as the seller.

The director denied the petition, determining that even though the invoices above establish that the foreign company is doing business, the wire transfers do not establish that the foreign company paid for the U.S. entity. Specifically, the petitioner failed to explain the relationship between the five wire transfer originators and the alleged parent company.

On appeal, the petitioner submits a letter from the foreign entity stating that it has invested \$60,000 in the U.S. company and is thereby the petitioner's parent. The foreign entity further explains that it transferred its accounts receivable by requesting its customers to "wire their payments directly to the appointed U.S. bank account." The letter also explains that, because the petitioner was unable to get a tax identification number right away, the money from the accounts receivable was wired into the personal bank accounts of the company's officers, one of whom is the beneficiary in the instant case. Nevertheless, the third-party transfer described above was not documented in a way that would enable the Bureau to conclude that the foreign entity was the originator of the transferred funds which the petitioner claims were used to purchase its stock. The record contains no authorization from the foreign entity allowing its customers to pay

their debts to the foreign entity by transferring money to either of the two previously-named beneficiaries. Simply 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).

On review, there is insufficient evidence to demonstrate that a qualifying relationship exists between the U.S. petitioner and the beneficiary's foreign employer. The documents submitted indicate that there is a break in the chain of evidence in regard to the money transfers used to purchase the petitioner's stock. That money went from the foreign company's customers to two of the foreign company's employees' bank accounts, to the petitioner's business account. The chain raises the question of whether the owners of the petitioner's stock could be the same individuals who received the money from the foreign entity's customers and who later transferred that money to the petitioner's bank account. There is no evidence that directly links the foreign entity to the U.S. petitioner. For this reason, the petition cannot be approved.

Beyond the decision of the director, the petitioner has submitted insufficient evidence to establish that the petitioner has been and will be employed in a primarily executive or managerial 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 record does not establish that a majority of the beneficiary's duties have been or will be primarily directing the management of the organization. The description of the beneficiary's duties is too vague and general to provide an understanding of exactly what the beneficiary does on a daily basis. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing nonqualifying duties. The petitioner has not demonstrated that it has reached or will reach a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis. Moreover, the record does not demonstrate that the beneficiary primarily manages an essential function of the organization or that she operates at a senior level within an organizational hierarchy. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. However, as the appeal will be dismissed on other grounds discussed earlier, this issue need not be further addressed.

In visa petition proceedings, the burden of proof 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.