

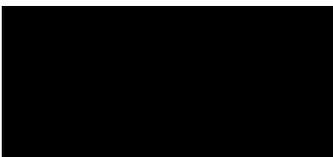
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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



NOV 13 2003

FILE: LIN 02 122 53585 Office: NEBRASKA SERVICE CENTER Date:

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:

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

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

The petitioner claims to be an international trade and import and export company, marketing Chinese arts, craft and jewelry. It seeks authorization to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge, namely operations supervisor. The director determined that the petitioner had not established that: (1) the beneficiary's foreign employment involves specialized knowledge; (2) the beneficiary would be employed by the U.S. entity primarily in a capacity requiring specialized knowledge; and (3) the petitioner had been doing business.

On appeal, counsel submits a brief and additional evidence. Counsel asserts that the director failed to consider that the proposed U.S. position requires specialized knowledge, and that the beneficiary qualifies as an individual with specialized knowledge. Counsel further maintains that the director failed to take into consideration all evidence submitted to establish that the U.S. entity is doing 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.

The regulations at 8 C.F.R. § 214.2(l)(3) state, in part, 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 (l)(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.

According to the evidence contained in the record, the petitioner

is a wholly-owned subsidiary of Guillin Silver Dragon Jewelry Company located in Guillin, China. The petitioner was incorporated in 2000 and claims to be engaged in international trade, import and export, and marketing of Chinese art crafts and jewelry products in the United States. The petitioner declared three projected employees and \$200,000 in projected gross revenues. The petitioner seeks the beneficiary's services in order to serve as an operations supervisor and to render services in a specialized knowledge capacity for a three-year period, at a yearly salary of \$38,000.

At issue in this proceeding is whether the beneficiary possesses specialized knowledge, and has been and will be employed in a specialized knowledge capacity.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

For purposes of section 101(a)(15)(L) [of the Act, 8 U.S.C. 1101 (a)(15)(L)], an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

Specialized knowledge means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In examining the specialized knowledge capacity of the beneficiary, Citizenship and Immigration Services (CIS) will look first to the petitioner's description of the job duties. In the initial petition, the petitioner described the beneficiary's duties with the foreign entity as follows:

[The beneficiary] manages and directs the company's purchasing; handles short-term loans from overseas companies; opens letters of credit for all of the transactions; liaisons with Silver Dragon USA in the United States; and supervises administrative employees within the company.

The petitioner further described the beneficiary's proposed duties in the United States as follows:

[The beneficiary] will oversee budgets, financial matters and regulatory compliance; handle the company's imports and exports relating to traditional Chinese jewelry products; develop and implement overall performance goals; review and negotiate contracts with vendors in China, Hong Kong, and Taiwan; develop business and customer relations in China and in the United States; plan and schedule delivery of goods; analyze and interpret market research and development; and supervise other employees and staff on an as-needed basis.

A copy of the beneficiary's resume was also submitted in support of the petitioner's specialized knowledge claim. According to the resume, the beneficiary possesses a bachelor degree in Chinese literature from Guangxi University. She lists her employment with Guilin Silver Dragon Pearl Company from 3/97 to 6/99 as manager of the merchandise department, and from 6/99 to the present as assistant to the general manager/president. The beneficiary's duties as an assistant to the general manager/president were listed as follows:

Assists the president to direct, plan, and implement sales strategies and promotion of company's products; manage and supervise contract negotiation and performance; assist the General Manager/President to determine products pricing and financial matters; coordinate activities among Sales, and Accounting department; contact company's main suppliers to ensure adequate raw materials supply; supervise more than 185 employees; and responsible for more than 5.6 million RMB gross annual sales each year.

The director issued a request for evidence, dated March 1, 2002, to the petitioner requesting that the petitioner provide a more detailed description of the beneficiary's current and proposed day-to-day duties; supplemented by an estimate of the percentage of time the beneficiary currently dedicates and would dedicate to each duty. The director further requested that the petitioner provide evidence that would illustrate how the beneficiary's knowledge is advanced, unique and uncommon.

The petitioner responded to the director's request in a letter dated March 20, 2002. In that letter, the petitioner addressed the specialized knowledge issue by stating that the beneficiary had acquired "intimate knowledge of the proprietary techniques in running a department store specializing in Chinese art crafts, jewelry, and traditional products." She went on to say that the beneficiary acquired her management skills necessary to perform her day-to-day operational activities while working for the foreign entity. The petitioner noted that the beneficiary has acquired the necessary skills and abilities to repair and reproduce broken

expensive Chinese art products by presenting as evidence the beneficiary's certificate of accomplishment issued by Guilin Exhibition Institute. Finally, the petitioner asserted that the beneficiary's knowledge is advanced, that she possesses a unique skill set, and that the U.S. entity is in need of someone to run its operations and to repair and reproduce broken Chinese art products.

The petitioner submitted a support letter dated March 5, 2002, certifying that the beneficiary worked for Guilin Exhibition Institute Art Crafts Division from September 1979 to November 1980, specializing in traditional sculpture and reproduction, layout and design of art crafts, with special skills in repair.

In response to the director's request, the petitioner also provided a list of the beneficiary's current duties in China, with estimates of time noted as:

- Assists the General Manager in managing the daily administration of the company (30%);
- Manages and directs the company's purchasing activities (25%);
- Handles short-term loans from overseas companies (10%);
- Opens letters of credit for the major the transactions [sic](10%);
- Serves as a liaison with Silver Dragon USA in the U.S. (15%); and
- Assists to supervise administrative employees within the company (10%).

The petitioner also stated that the proposed duties of the beneficiary for the U.S. entity are as follows:

- Assist the president to oversee budgets, financial matters and regulatory compliance (10%);
- Handle the company's imports and exports relating to traditional Chinese jewelry art crafts products (15%);
- Review and negotiate contracts with vendors in China, Hong Kong, and Taiwan (20%);
- Develop business and customer relations in China and in the U.S. (15%);
- Plan and schedule delivery of goods (5%);
- Repair and reproduce expensive art works damaged during the shipping (20%);
- Analyze and interpret market research and development in the U.S. (10%); and
- Supervise other employees and staff on an as-needed basis (5%).

The director denied the petition after determining that the petitioner did not establish that the beneficiary had been engaged in a position involving specialized knowledge while in the foreign entity's employ or as proposed for the U.S. entity. The director stated, in part:

The record does not establish that the beneficiary possesses unusual, advanced or specialized knowledge of the petitioner's products, processes, and procedures. The petitioner has not established that the beneficiary's current position and the proffered position require a worker with specialized knowledge. The petitioner has not demonstrated that the beneficiary's skills and abilities are substantially different from, or advanced in relation to other individuals working as assistants and operations managers in the field of import/export business. As a result, the petitioner has not established that the beneficiary has specialized knowledge, or that she has been or would be employed in a capacity requiring specialized knowledge.

On appeal, counsel asserts that the new evidence establishes that the beneficiary's specialized skills and knowledge had been continuously developed over the years. Counsel further states that the director failed to take into account that the proposed position requires specialized knowledge. Counsel reasons the position requires someone with specialized knowledge of Chinese jewelry, arts and crafts. He concludes by stating that the petitioner has been employed by the foreign entity, in managing its specialized jewelry store and operations, since June 1996.

In support of the appeal, counsel submits three copies of certificates, accompanied by translation letters, attesting to the beneficiary's specialized knowledge. The first two certificates are Certificates of Quality of Jewelry Products issued by the Guangxi Provincial Jewelry Products Inspection Services dated December 30, 2001. These certificates acknowledge receipt of the sample art products designed by the beneficiary and confirm that the first piece was a sample Shoushan Stone art product, and that the second piece was a artificial crystal art product. The third certificate was a Certificate of Completion issued by the Administration of Guilin Technology Inspection. It is a mandatory certificate that acknowledges the beneficiary's completion of necessary training and successful passage of the examination, which in turn, allows her to sell jewelry and golden products.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge capacity or that the beneficiary is to perform duties involving specialized knowledge for the U.S. entity.

The evidence of record indicates that over 70 percent of the beneficiary's time working for the foreign entity is spent performing regular administrative duties. The evidence does not indicate that any of the beneficiary's time has been devoted to repair and reproduction. The record also reflects that only 20 percent of the beneficiary's time will be dedicated to the repair and reproduction of expensive Chinese art crafts and products for the U.S. entity. The petitioner has not submitted sufficient evidence to establish that the U.S. entity is in need of an employee who possesses specialized knowledge. There has been no evidence presented to show that the beneficiary's duties are in any way unique, uncommon, or advanced, or that the beneficiary is the only employee that possesses specialized skills and knowledge.

Although the beneficiary's title has been described as assistant to the general manager of the foreign entity, there has been no evidence presented to show how her day-to-day functions require specialized knowledge. The petitioner's general descriptions of the beneficiary's duties such as "manages and directs the company's purchasing; handles short-term loans . . . opens letters of credit . . . and supervises administrative employees" are not sufficient to establish that the beneficiary possesses specialized knowledge of the company's product and its application in the international market. Nor will the generalities suffice to support the petitioner's contention that the beneficiary possesses intimate knowledge of the proprietary techniques in running a department store specializing in Chinese art crafts, jewelry, and traditional products. While the petitioner insists that the beneficiary's claimed position as an assistant to the general manager/president involves specialized knowledge, the petitioner did not submit evidence to distinguish her position from that of any other administrative or managerial staff. 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).

In addition, the record contains a number of ambiguities regarding the beneficiary's job title and qualifications. The petitioner requested authorization to employ the beneficiary as an "Operations Supervisor" and referred to the beneficiary's proposed title in the United States company flow chart as the "Retail Store Supervisor." The petitioner did not submit any evidence to establish that the beneficiary has actually held the title of operations supervisor or retail store supervisor, or that she had performed similar duties while employed by the foreign entity. In fact, the beneficiary's resume states that she has been employed as an assistant to the general manager/president. In her resume, the beneficiary also states that she "supervises more than 185 employees." In contrast, the petitioner states that the beneficiary spends only 10 percent of her time assisting, not supervising, the supervision of administrative employees within the company. 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, 591-92 (BIA 1988). The job descriptions provided by the petitioner are too vague and inconsistent to conclude that the beneficiary is in any way utilizing specialized knowledge in carrying out the day-to-day functions of the corporation.

In addressing the beneficiary's qualifications on appeal, counsel submits three copies of certificates, accompanied by translation letters, attesting to the beneficiary's specialized knowledge. The first two certificates acknowledge receipt of sample art products designed by the beneficiary, and confirms the art objects' authenticity. The third certificate was a mandatory certificate that acknowledges the beneficiary's completion of necessary training and successful passage of the examination, which in turn, allows her to sell jewelry and golden products. The petitioner also submitted a support letter, dated March 5, 2002, certifying that the beneficiary worked for Guilin Exhibition Institute Art Crafts from September 1979 to November 1980 specializing in traditional sculpture and reproduction, layout, and design of art crafts. Neither the beneficiary's duties nor the certification received is sufficient to support the petitioner's specialized knowledge claim. The record reflects skills and training acquired by the beneficiary since 1979. However, this evidence is not sufficient to establish that the beneficiary has acquired and/or is utilizing specialized knowledge in the field. The evidence does not establish that the beneficiary possesses an advanced level of knowledge or expertise in the organization's processes and procedures.

Finally, if the beneficiary is to be employed as an operations supervisor by the petitioning corporation, it must be noted that the petitioner has not established whether the beneficiary has been employed overseas in that capacity for the requisite one year in the three years prior to the filing of the petition. See 8 C.F.R. § 214.2(1)(3)(iv). Although the petitioner claimed that the beneficiary has been employed by Guangxi Guilin Silver Dragon as an assistant to the general manager/president and the manager of the merchandise department before that, no evidence was submitted to establish at what point, if any, the beneficiary began to function in a specialized knowledge capacity. The beneficiary's resume indicates that she performed duties as a manager and as assistant to the general manager. The beneficiary's resume lists no experience as an operations supervisor or a retail store supervisor, or one who has acquired and utilizes specialized knowledge in the day-to-day operations of the company.

In conclusion, the record does not establish that the beneficiary has been employed in a specialized knowledge capacity or that the beneficiary is to perform a job involving specialized knowledge in

the proposed position. The petitioner has not identified or established that any aspect of the beneficiary's position involves specialized knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. Instead, the petitioner has simply asserted that the beneficiary is a "manager" without submitting supporting evidence of this claim, and generally insisted that the position requires "specialized knowledge" without articulating the nature of that knowledge. The petitioner has not submitted any evidence that would differentiate the beneficiary's position, or her knowledge and expertise, from that of others similarly skilled in the petitioner's employ. In accordance with the statutory definition of specialized knowledge, a beneficiary must possess "special" knowledge of the petitioner's product and its application in international markets, or an "advanced level" of knowledge of the petitioner's processes and procedures. Here, the petitioner has not established that the beneficiary possesses any knowledge that is special, or of an advanced level, or that would generally rise above that of any other operations supervisor. There is nothing unique, uncommon or unusual about the administrative duties carried out by the beneficiary on a daily basis. There is nothing in the record that would indicate that the beneficiary possesses knowledge that is valuable to the employer's competitiveness in the market place. There has been no evidence presented to establish that the beneficiary's proposed duties are or will require specialized knowledge to perform. Accordingly, the petitioner has not established that the beneficiary has been employed in a specialized knowledge position or that the beneficiary would be employed in a position involving specialized knowledge. For this reason, the petition will be denied.

A final issue raised by the director is whether the petitioner is a qualifying operation doing business in the United States pursuant to 8 C.F.R. § 214.2 (1)(1)(ii)(G)(2) and (H) in that it is engaged in the regular, systematic, and continuous provision of goods and/or services, and is not merely an agent or office.

The director, in review of the evidence, denied the petitioner's visa petition noting that the petitioner had not established that it was doing business in the United States. On appeal, counsel disagrees with the director's assertion and states that the director failed to take into consideration the letter dated February 22, 2002 concerning a loss of the U.S. entity's banking and business records. The letter, written by attorney William Larkins, Jr. to the FBI, addresses an alleged banking and check cashing fraud on the part of a former Silver Dragon employee in the United States. The attorney describes the alleged incidences and requests a formal investigation and referral for criminal prosecution. There is no mention of any loss of banking or business records in the letter, just the loss of large sums of money. In addition, the petitioner requests the services of the beneficiary so that she can handle the fraud matter and run the

operation. This evidence is not sufficient to excuse the production of documents requirement in compliance with the regulation at 8 C.F.R. § 103.2(b)(2) and (b)(4).

Evidence submitted by the petitioner fails to substantiate its claim of doing business in the United States at the time the petition was filed. The petitioner failed to produce relevant documents, proof of doing business in the United States, such as business licenses, copies of banking statements, U.S. federal and state tax returns and other vital business documents. Although the petitioner did submit articles of incorporation and evidence that various goods had been shipped to the U.S. entity from China since the company's incorporation, this evidence alone is insufficient to establish that the U.S. entity is engaged in the regular, systematic, and continuous provision of goods and/or services as a qualifying organization for more than one year prior to the submission of the visa petition. Furthermore, there is a grave discrepancy in the evidence submitted concerning when the operation actually began doing business in the United States. The record reflects that the petition was filed on February 26, 2002. A lease agreement entered into by Bing Kung Bow Leong Association and Silver Dragon USA has a commencement date of September 1, 2001 and an end date of August 31, 2006. Also, the petitioner submitted two INS employment eligibility verification forms signed and dated September 18, 2001. The petitioner also submitted an application for employer identification number to the federal government dated December 15, 2000, with the first date of anticipated wages to be paid on April 1, 2001. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In summary, the record as presently constituted is not persuasive in demonstrating that the petitioner, at the time of filing the petition, was doing business in the United States within the meaning of the regulations. For this additional reason, the petition will be denied.

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.