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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. Ave., 3rd Floor
425 Eye Street N.W.
Washington, D.C. 20536



File: WAC 99 061 50057 Office: CALIFORNIA SERVICE CENTER Date:

NOV 21 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

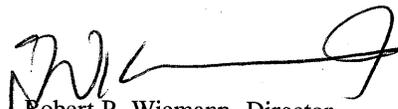
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office 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 Director, California Service Center, denied the nonimmigrant visa petition. The petitioner subsequently appealed the denial before the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO will be affirmed.

The petitioner is involved in the business of international trade. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director's denial of the petition was based on the determination that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, the petitioner asserted that the director's adjudication of the instant case was inconsistent with prior rulings in similar cases.

The AAO dismissed the appeal, reasoning that the petitioner failed to submit sufficient evidence establishing that the beneficiary's daily activities are managerial or executive in nature. The AAO specifically noted that the record lacks evidence that would indicate that the beneficiary would be relieved of having to perform non-qualifying tasks.

On motion, the petitioner claims that the director failed to uniformly apply the applicable regulations. In support of this claim, the petitioner cites prior cases adjudicated by the AAO.

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 U.S. petitioner states that it was established in 1993 in the state of California, and that it is a subsidiary of Jiangxi Cereals, Oils, & Foodstuffs Import and Export Corporation, located in Nanchang, China. The petitioner declares three employees and \$1.1 million in gross revenues. The initial petition was approved and was valid from February 1, 1994 to February 1, 1997. The beneficiary's status was subsequently extended to February 1, 1999.

The petitioner now seeks to extend the petition's validity and the beneficiary's stay for an additional three years at an annual salary of \$24,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and 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:

"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.

On motion, the petitioner compares the instant matter to a specific case previously adjudicated by the Associate Commissioner. However, 8 C.F.R. § 103.3(c) provides that only AAO precedent decisions are binding on CIS employees. Contrary to the petitioner's apparent misconception, there are no statutes or regulations that similarly treat unpublished decisions such as the one noted in the petitioner's brief.

The petitioner also refers to its prior petitions that CIS had previously approved without questioning the nature of the beneficiary's position. However, the director's decision does not indicate whether she reviewed the prior approval of the other nonimmigrant petition. The record of proceeding does not contain copies of the visa petition that was previously approved. If the previous nonimmigrant petition was approved, based on the same unsupported assertions that are contained in the current record, the approval would constitute clear and gross error on the part of CIS. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), cert denied, 485 U.S. 1008 (1988).

Furthermore, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), aff'd 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

The only other evidence submitted by the petitioner on motion is its 1999 tax return. However, as the petition was filed in 1998, the petitioner's tax return for the following year has no relevance

in the instant matter and therefore need not be discussed.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner has stated in the petition that it employs three people, including the beneficiary himself. Based on the previously submitted quarterly wage and withholding reports for quarters ending March, June, and September of 1998, two of the employees who work under the beneficiary make less than \$10,000 per year. This wage is not commensurate with that of a full-time employee. Therefore, as concluded by the Associate Commissioner in his prior dismissal of the appeal, the petitioner has failed to submit sufficient documentation to establish that the beneficiary is relieved of having to perform non-qualifying tasks. Regardless of the inferences made by the beneficiary's job description, 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).

The petitioner has indicated that it is a small operation that does not require more employees than it currently has. However, the fact that an individual manages a small business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. 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 petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel who 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 and 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. Nor does the record demonstrate that the beneficiary primarily manages an essential function of the organization. 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. 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. Accordingly, the previous decision will be affirmed.

ORDER: The decision of the Administrative Appeals Office, dated May 22, 2000, dismissing the appeal, is affirmed.