

Department of Homeland Security  
Citizenship and Immigration Services

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

NOV 25 2003

File: WAC-02-059-56463 Office: California Service Center Date:

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:

**PUBLIC COPY**

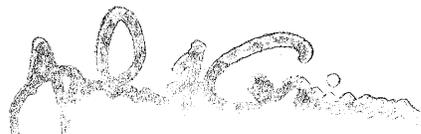
INSTRUCTIONS:

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 which 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 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is engaged primarily in the importing and distribution of casting iron, enamel stoves and fireplaces. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its general manager/finance. The director determined that the petitioner had not established that the beneficiary had been and would be employed in a primarily managerial or executive capacity.

On appeal, counsel states that the beneficiary is one of the only two managerial employees of the company. Counsel further states that the reasons for the denial are not accurate and submits a brief in rebuttal to the director's findings.

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.

Regulations at 8 C.F.R. § 214.2(l)(14)(ii) state that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The United States petitioner was established in 1998 and states that it is a wholly-owned subsidiary of Grandview Trading Company, located in Hong Kong. The petitioner claims five employees and seeks to extend the employment of the beneficiary for three years at an annual salary of \$35,000.

The issue to be addressed in this proceeding is whether the beneficiary has been and will be employed in a primarily 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.

In response to a director's request for additional evidence, the petitioner's counsel described the beneficiary's duties as follows:

[The beneficiary] is the General Manager of [the] petitioner, responsible for the overall management of its business. Her expertise in financial management serves a necessary role in safeguarding the parent company's substantial investment in the U.S. and managing its profitability. Her effective management expertise directly contributed to [the] petitioner's initial success in the United States. As general manager, she played a key decision-making role, which cannot easily be replaced. As [the] petitioner's business continues to grow, [the beneficiary] is expected to continue to be responsible for setting up its corporate policies and business development strategies. She is also expected to apply her management expertise and specialized knowledge of our product lines to direct the management and development of continued international operation. Specifically, [the beneficiary's] job duties include:

1. direct the formation and final approval of petitioner's corporate policy;
2. approve the overall development strategy and its implement plan;
3. approve employment decisions;
4. approve budgetary decisions and major contracts for the U.S. operations;
5. approve annual and monthly financial report;
6. make financial evaluation for new products development; [and,]
7. direct coordination of financing and fund management between [the] petitioner and the parent company.

In his decision, the director noted that the petitioner had submitted evidence that it has nine employees and that all of the employees held some sort of managerial title such as president,

vice-president, marketing and sales manager, business manager, operations manager, and accounting manager as well as the beneficiary's position of general manager/finance. The director further concluded that the described duties of the beneficiary were too vague to convey any understanding of exactly what the beneficiary did on a daily basis.

On appeal, counsel states, in pertinent part, that:

The Service failed to adequately review and respond to the documents submitted. Nothing was mentioned or analyzed in the Service's decision regarding the inadequacy of the documents submitted. Rather, the Service summarily denied the petition by concluding that "the beneficiary has not and will not be employed in a primarily managerial capacity."

Counsel's conclusion that CIS failed to consider all of the documentary evidence of record simply because the director did not mention all the documentary evidence submitted in his decision is conjecture without any basis in fact.

The evidence provided is inconsistent and insufficient to demonstrate that the beneficiary will be employed in a primarily managerial or executive capacity. On December 6, 2001, the U.S. entity filed the instant petition claiming 5 employees. In response to a request for additional evidence, on March 20, 2002, the petitioner's counsel submitted an organizational chart indicating that the U.S. entity had a total of nine employees. All nine of the employees were identified as management employees in the positions of president, vice-president, general manager, marketing and sales director, marketing manager, business manager, operations manager, sales manager, and accounting manager. The chart indicated that all but the positions of president and vice-president reported to the beneficiary as general manager. On appeal, however, counsel states that the "appellant respectfully asserts that the beneficiary, as one of the only two managerial employees of the company, performs managerial/executive duties as per 8 CFR Section 214.2(l)(ii)(B)." The petitioner has not explained these discrepancies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on 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 (Comm. 1988).

Further, the chart provided no evidence that the petitioner has any non-management employees to perform the day-to-day functions of the company. The record contains insufficient evidence to demonstrate

that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary has been or will be managing the organization, or managing a department, subdivision, function, or component of the company. The organizational chart notwithstanding, the petitioner's evidence is not sufficient in establishing that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing nonqualifying duties. The petitioner has not shown that the beneficiary has been or will be functioning at a senior level within an organizational hierarchy other than in position title.

Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

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.