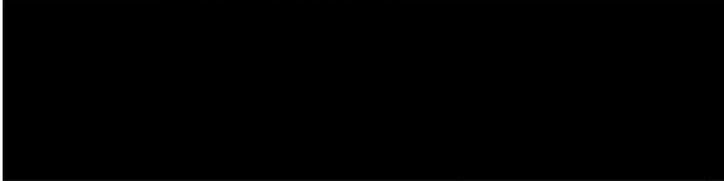


D7

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

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street NW
Washington, DC 20536

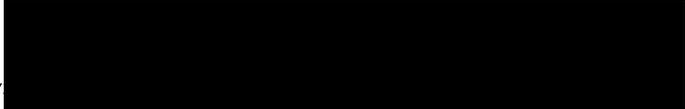


FILE: WAC 01 272 52293

Office: CALIFORNIA SERVICE CENTER Date:

OCT 16 2003

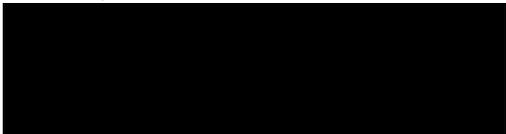
IN RE: Petitioner:



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)

ON BEHALF OF PETITIONER:



PUBLIC COPY

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, Chiieh Yung Metal Industrial Corporation dba C&C International Group avers that it is an affiliate of a Chinese business, Qiang Jue (Nanjing) Developing Hardware Co., Ltd. The petitioner states that it imports and sells tools and hardware items. The petitioner now endeavors to hire the beneficiary as a new employee. Consequently, in August 2001, the U.S. entity filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee (L-1) for three years. The petitioner seeks to employ the beneficiary as the U.S. entity's manager of accounting and finance at an annual salary of \$24,000.

On November 19, 2001, the director determined, however, that a qualifying relationship does not exist between the petitioner and the Chinese entity. Additionally, the director concluded that the beneficiary will not perform managerial or executive duties in the United States. Consequently, the director denied the petition. On appeal, the petitioner's counsel asserts that the U.S. entity has a qualifying relationship with the Chinese company and that the beneficiary will be employed in a managerial position.

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 meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

Under 8 C.F.R. § 214.2(1)(3), 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.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue the AAO will address is whether the petitioner has a qualifying relationship with the Chinese entity. On appeal, counsel claims the petitioner is an affiliate of the Chinese company. The pertinent regulations at 8 C.F.R. § 214.2(1)(1)(ii) define a "qualifying organization" and related terms as:

(G) *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.

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

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

(K) *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.

(L) *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 regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this nonimmigrant visa petition. *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 595 (Comm. 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International, supra.*

Initially, and in response to the director's September 13, 2001, request for evidence, the petitioner submitted documentation to support the claimed affiliate relationship. The relevant evidence includes:

- A business license for the Chinese company. The petitioner submitted Chinese and English language versions of the license; however, the petitioner did not identify who rendered the translation.
- The U.S. entity's February 28, 1997 bylaws.
- The February 28, 1997 unanimous written consent of the petitioner's directors selling 10 shares of the U.S. entity's common stock to Jean W. Pope.
- Stock Certificate Number 1, dated February 28, 1997 issuing 10 shares of common stock to Jean W. Pope.
- Minutes of a December 30, 1998 board of directors meeting of the Chinese entity. The minutes stated that the Chinese entity sold 80 percent of its shares to Jean Pope and the remaining 20 percent of its shares to [REDACTED]. The petitioner submitted Chinese and English language versions of the minutes; however, the petitioner did not identify who rendered the translation.
- The petitioner's U.S. Corporation Income Tax Returns for the years 1997, 1998, and 1999. Schedule E on each of these returns indicates that [REDACTED] owns 100 percent of the petitioner's stock.

The director found no evidence of an affiliate relationship. Specifically, the director concluded:

The record does not show that the two companies are owned and controlled by the same parent or individual, or that the two companies are owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity.

The record, as presented, suggests that one individual, namely, [REDACTED] owns a majority interest in and controls both the

Chinese and U.S. entities; therefore, under the regulations, the two entities may be deemed to be affiliates. Consequently, the director's reasoning regarding the affiliate relationship is withdrawn.¹

Despite withdrawing the director's reasoning on the affiliate relationship, the AAO must review the record as presented. As noted above, the petitioner did not identify who prepared translations of the Chinese company's business license or the minutes of the Chinese entity's December 30, 1998 board of directors meeting. The regulations at 8 C.F.R. § 103.2(b)(3) state:

Translations. Any document containing foreign language submitted to [CIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The translations that the petitioner submitted lack any of the certifications required under the regulations. In this instance, the translated documents are essential to demonstrating that the Chinese and U.S. entities are affiliated. Given that the translated documents do not meet the evidentiary standards set forth in 8 C.F.R. § 103.2(b)(3), they cannot establish that the two entities are affiliates.

Moreover, the AAO notes that, although the petitioner submitted copies of various wire transfers and canceled checks, these items do not clearly demonstrate that [REDACTED] owns 80 percent of the Chinese entity's shares. Going on record without supporting documentary evidence is insufficient for the purpose of meeting the burden of proof in these proceedings. *Ikea US, Inc. v. INS*, 48 F. Supp. 2d 22, 24-5 (D.D.C. 1999); see generally *Republic of Transkei v. INS*, 923 F.2d 175 (D.C. Cir. 1991) (discussing burden the petitioner must meet to demonstrate that the beneficiary qualifies as primarily managerial or executive); *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In sum, the petitioner has not established an affiliate relationship with the Chinese company.

¹ The director further found that no subsidiary relationship exists in this instance. The AAO will not review this finding as the petitioner claims only to have an affiliate relationship with a Chinese company.

The AAO now turns to the question of whether the beneficiary will primarily work as a manager.² In regard to the issue of whether a beneficiary has been and will be primarily performing managerial duties, 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.

When examining the managerial capacity of the beneficiary, CIS will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(1)(3)(ii). The petitioner initially listed the beneficiary's duties on Form I-129 as: "Finance Manager, overseeing and directing all activities

² The petitioner makes no claim that the beneficiary will serve in an executive capacity.

relating to budget, accounting and finance, hiring and firing staff, overseeing a staff of three others." In an August 30, 2001 letter attached to Form I-129, the petitioner described the beneficiary's proposed duties in greater detail:

[The beneficiary] will work as our Finance Manager. In this capacity, she will oversee the Finance and Accounting Department containing four employees. She will execute her managerial duties by directing the activities of the Finance and Accounting Supervisor, Ms. [REDACTED] Ms. [REDACTED] in turn will supervise and direct two accounting clerks, [REDACTED] and [REDACTED]. The beneficiary . . . will manage all finance and accounting activities of our companies, including all financial functions. She will formulate and propose finance policy and submit her findings to the President. She will gather data regarding budget, cash flow, assets, liabilities, accounts receivable, costs and expenses, as well as sources of capital. She will direct her department in arranging for means of payment to Chinese sources of goods from U.S. and other international purchasers. [The beneficiary] at all times will supervise and control the Finance and Accounting Supervisor, who in turn will carry out her orders through lower personnel. [The beneficiary] will have the authority to hire and fire staff, recommend salary increases and bonuses, as well as discipline. She will exercise discretionary power over the day-to-day activities of her department.

In response to the director's September 13, 2001, request for evidence, the petitioner further elaborated on the beneficiary's proposed duties:

[The beneficiary] will formulate policy and manage [sic] all activities [sic] relating to finance and accounting in the U.S. company. She will instruct her staff into [sic] the methods and procedures for gathering data regarding budgeting for all company expenses, within the general guidelines set by the President (20% of her time). She will instruct her staff in the policy regarding data acquisition, record keeping and reporting regarding cash flow, assets, liabilities, accounts receivable, costs and expenses, and [sic] well as sources of capital (30% of her

time). She will instruct her staff into [sic] the methods for approaching delinquent accounts regarding receivable [sic], supervise results, and report back to the President (20% of her time). She will also formulate policy and implement it with regard to acquisition of favor [sic] exchange rates for international transactions (15% of her time), as well as securing foreign tax rebates (15% of her time). She will rely upon her more than 5 years of experience [with the Chinese entity] as well as her experience in dealing with Chinese trading companies in negotiating the best deals in the sales of products.

Finally, in response to the request for evidence, the petitioner submitted an organizational chart. The chart depicted the beneficiary as supervising an accounting supervisor [REDACTED]. In turn, the chart shows [REDACTED] as supervising an accounting clerk [REDACTED]. The petitioner characterized Christina Rogers' duties as:

Supervises the activities of an accounting clerk in the gathering and cataloguing of data regarding sales; receipts; accounts receivable; purchasing; finance; costs of doing business such as rent, insurance, utilities, salaries, office supplies; cash flow; budget.

The petitioner listed [REDACTED] responsibilities as: "Will perform the gathering of data as described above, under the immediate supervision of [REDACTED]."

The job descriptions above reveal that [REDACTED] and [REDACTED] are performing routine clerical and bookkeeping tasks rather than professional duties. Consequently, despite the proposed managerial title, the beneficiary will at most be acting as a first-line supervisor. See section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A)(iv).

Furthermore, the duties and percentages of time listed above are too broad to convey an understanding of the beneficiary's daily activities. For example, in several instances, the duties referred to formulating policies and setting goals; however, the petitioner failed to identify the particular policies or goals. Going on record without supporting documentary evidence is insufficient for the purpose of meeting the burden of proof in these proceedings. *Ikea US, Inc. v. INS, supra; Republic of*

Transkei v. INS, supra; Matter of Treasure Craft of California, supra.

Additionally, the petitioner generally paraphrased the statutory definitions of "managerial" capacity. See section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). For instance, the petitioner depicted the beneficiary as having the authority to recommend the hiring, promotion, and termination of the U.S. entity's staff. Similarly, the petitioner stated that the beneficiary will exercise near-complete discretionary decision-making authority over the day-to-day execution of her managerial duties.

Moreover, the beneficiary's proposed duties mainly appear to comprise tasks necessary to produce a product or provide services. For instance, the beneficiary's proposed tasks include exchanging money at favorable rates, obtaining tax rebates, negotiating deals with Chinese companies, and performing general accounting duties. An employee who primarily performs the tasks necessary to produce a product or provide services is not considered to be employed in a managerial capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Thus, the record lacks adequate supporting documentary evidence to demonstrate that the beneficiary's duties are primarily managerial.

Beyond the decision of the director, the AAO notes that the beneficiary's responsibilities for the Chinese entity do not qualify as primarily managerial. See 8 C.F.R. § 214.2(1)(3)(iv). The description of her duties abroad generally restate the language of the statute. See section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). For example, the petitioner characterized the beneficiary's responsibilities abroad as having the authority to hire and fire employees and the discretion to develop policy for her department. Moreover, the listed duties are too general to convey an understanding of her daily duties abroad. For instance, the petitioner stated only that the beneficiary "oversaw and directed the activities of a staff of seven employees." *Ikea US, Inc. v. INS, supra; Republic of Transkei v. INS, supra; Matter of Treasure Craft of California, supra.* Finally, her duties abroad largely comprised bookkeeping tasks; thus, her work mainly encompassed producing a product or providing a service. *Matter of Church Scientology International, supra.* However, as the appeal will be dismissed, the AAO will not examine this issue any further.

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; *Transkei*, 923 F.2d at 178 (holding burden is on the petitioner to provide documentation); *Ikea*, 48 F.Supp at 24-5 (requiring the petitioner to provide adequate documentation). The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.