

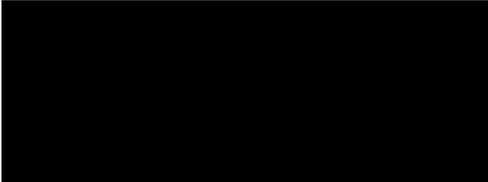
**PUBLIC COPY**

U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

Identifying data deleted to  
protect identity of unrepresented  
individuals pursuant to privacy



D7

FILE: EAC 01 232 52430 Office: VERMONT SERVICE CENTER

Date: APR 12 2004

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner claims to be engaged in the business of importing and exporting fabric and yarn. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its chief executive officer. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity. On appeal, the petitioner disputes the director's findings and submits a brief in support thereof.

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 U.S. petitioner was established in 1987 in the state of New York and states that it is a subsidiary of Chinatex, located in China. The initial petition was approved and was valid from August 29, 1998 to August 28, 2001. The petitioner seeks to extend the petition's validity and the beneficiary's stay for an additional three years at an annual salary of \$100,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be employed primarily in a managerial or executive capacity.

Section 101(a)(44)(A) of the Immigration and Nationality Act ("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.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "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 a letter provided in support of the petition, the petitioner stated that it has been in the process of merging several of its U.S. affiliates, all of whom are subsidiaries of the same parent organization. The petitioner also stated that the subsidiary that currently employs the beneficiary will merge into the petitioning entity, which seeks to employ the beneficiary pending approval of the instant petition. The petitioner claimed that the beneficiary's duties in the United States prior to the merger "include, but [are] not limited to the duties of planning, developing and establishing policies and objectives of the entire company in accordance with the established directives of the corporation charter." The organizational chart of the beneficiary's current employer shows that the company employs the beneficiary as the CEO and one other employee as the sales manager. The petitioner also provided the following description of the beneficiary's proposed job duties:

As chief of the corporate restructuring, [the beneficiary] will first be responsible for reviewing the operations and administration of all of [the parent organization's] United States entities. As a business professional, [the beneficiary] will need to evaluate the costs and benefits to maintaining or terminating many corporate programs and business policies. Moreover, he will ensure that all companies . . . will be poised to join in the newly established corporate structure.

After the merger is achieved, [the beneficiary] will first review and determine the policies and objectives of [the petitioner]. As the primary business executive, he will establish directives and organizational policies with the assistance of the President and the mid-level managers. Further, [the beneficiary] will review the reports of the President and departmental managers to evaluate business progress and determine company goals. Essentially, [the beneficiary] will be working closely with the President before, during and after his duties in creating the merged corporation has [sic] been completed.

In order to provide funding for continuing operations of the company, [the beneficiary will] also [be] responsible for directing and coordinating the formulation of financial programs, in order to maximize returns on investments, and to increase productivity. He will be directing

the President and department managers to plan and develop industrial, labor, and public relations policies designed to improve the company's image and relations with customers, employees, stockholders, and [the] public. [The beneficiary] will also be granted absolute power in the evaluation of performance of executives for compliance with established policies and objectives of the firm and contributions in attaining objectives.

On December 18, 2001, CIS issued a request for additional evidence to establish that the beneficiary will be engaged in a primarily managerial or executive position in the United States. Among the documents requested, the petitioner was asked to provide a complete position description for all of the petitioner's employees, including one for the beneficiary. It is noted that the director apparently misunderstood that the beneficiary's current employment and his proposed employment are not with the same company, even though the two companies were affiliated and were part of a group of subsidiary companies belonging to the same parent organization.

The petitioner's response included the following hourly breakdown of the beneficiary's duties with his current U.S. employer, International Fibre Trading, Inc.:

5 hours: In charge of major aspects of the company operations and affairs particularly in office and business direction in the United States;

4 hours: Planning, developing and establishing policies and objectives of the entire company in accordance with the established directives and corporation charter;

3 hours: Reviewing the operations and administration of all the Parent Company's U.S. subsidiaries for the re-organization plan;

3 hours: Evaluating the costs and benefits to maintaining or terminating many corporate programs and business policies;

3 hours: Conferring with the presidents and department managers of all the Parent Company's U.S. subsidiaries to plan business objectives, develop organization policies to coordinate functions and operations between companies and departments;

3 hours: Reviewing the reports of the Presidents and managers of International Fibres Trading Inc. and all the Parent Company's subsidiaries to determine the companies' goals, objectives and the alternations of policies;

5 hours: Directing and coordinating the re-organization plan to merge all the U.S. subsidiaries of the Parent Company into one single entity;

2 hours: Conferring with the top management and the relevant departments of the Parent Company for the joint research relating to the re-organization of the U.S. subsidiaries of the Parent Company, including re-organization in structure, personnel arrangement, business and all other major changes in internal and external affairs;

3 hours: Establishing responsibilities and procedures for attaining objective [sic], reviewing activity reports and financial statements to determine progress and status in attaining objectives, and for the Parent Company's review;

1 hour: Revising objectives and planning in accordance with current conditions;

2 hours: Directing and coordinating the formulation of financial programs, in order to maximize returns on investments, and to increase productivity;

3 hours: Directing the President and department managers to plan and develop industrial, labor, and public relations policies designed to improve the company's image and relations policies with customers, employees, stockholders, and public;

2 hours: Visiting and meeting with important customers, banker and visiting group from China, exploring new business other than fibres trading, such as cooperative business, investments, joint ventures and raising of capitals [sic], etc.;

1 hour: Exercising absolute personnel management authority, including hiring, firing, promoting and transferring of employees within International Fibres of all the Parent Company's U.S. subsidiaries.

In regard to the beneficiary's proposed employment with the petitioning entity, the petitioner provided the following statement:

[The beneficiary] has been and will continuously be responsible for directing and overseeing all [of the parent organization's] five U.S. subsidiaries, which, will eventually be consolidated in one single entity. [The beneficiary's] role as CEO of [the petitioner] will be basically the same as those he has been performing in International Fibres in the past three years. Since the restructuring process is so complicated, as the sole decision maker for and on behalf of [the parent entity], [the beneficiary] will continue to handle the corporate restructuring in the United States in the coming years. [The beneficiary] is and will be responsible for reviewing the operations and administration of all [of the parent company's] United States entities, and to evaluate the costs and benefits to maintain or terminate many corporate programs and business policies. Furthermore, [he] has to ensure that all companies will be poised to join in the newly consolidated structure.

[The beneficiary] also reviews and determines the policies and objectives of our company, and also the other subsidiaries of [the parent company] in the United States. He also establishes directives and organizational policies of our company and other subsidiaries of [the parent company] with the assistance of the presidents and managerial employees. By reviewing the reports from the presidents and other departmental managers, [the beneficiary] has to evaluate business progress and to determine the company goals. In order to provide funding for the continuing operations of the company, [the beneficiary] will also [be] responsible for directing and coordinating the formulation of financial programs, so as to maximize profits and to minimize costs. [The beneficiary] will be directing the Presidents and department managers of [the petitioner] and other subsidiaries of [the parent company],

to plan and develop industrial, labor, and public relations policies designed to improve the company's image and relations with customers, employees, stockholders, and public. [He] is granted the absolutely [sic] authorities in handling personnel management matters.

The petitioner also provided the hourly breakdowns of its president, sales manager, financial controller, and its "supporting staff." The petitioner did not identify the positions that fall under the category of "supporting staff" and failed to indicate how long the position of financial controller remained vacant as was shown in the organizational chart initially submitted in support of the petition. The petitioner also failed to provide a position description for its sales assistant.

On August 9, 2002, the director denied the petition noting that the petitioner failed to clarify which of its employees solicit business and carry out the sales function. The director concluded that the description of the beneficiary's duties was too vague to provide CIS with a clear picture of what the beneficiary will be doing on a daily basis.

On appeal, the petitioner restated the beneficiary's current and proposed list of duties and resubmitted organizational charts for the petitioner and the beneficiary's current employer. The petitioner also restated the job duties of its president in an effort to disprove the director's finding that the president's job duties are the same as those of the CEO. While the words used to describe the president's job duties are different from those used to describe the beneficiary's job duties, the essence of the director's statement is accurate in that both sets of descriptions are vague and fail to state what each individual would actually be doing on a day-to-day basis. For instance, stating that the beneficiary will be "in charge of major aspects of the company" gives no indication as to what the beneficiary will actually be doing for five hours of his work week. Nor is there any clear indication as to what is involved in "directing and coordinating the re-organization plan," "exercising absolute personnel authority," "directing and coordinating the formulation of financial programs" or "directing the President and department managers," which cumulatively will consume another 16 hours per week. Thus, at least 50% of the beneficiary's overall time will be consumed with tasks that are entirely unclear to the AAO. Although the president's job description is also lengthy, it lacks any specificity regarding the president's daily job duties.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). Thus, requesting a complete description of the beneficiary's job duties and the job duties of the petitioner's remaining employees is the director's way of examining what the beneficiary and his direct and indirect subordinates actually do on a daily basis. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). In the instant case, the petitioner has provided lengthy descriptions for the beneficiary's current and proposed job duties. However, the descriptions are comprised mainly of such broad and general terminology that it is nearly impossible to determine what specific tasks the beneficiary has been and will be performing on a daily basis. Thus, regardless of whatever discretionary authority with which the beneficiary has been vested, the petitioner has not provided sufficient information regarding the beneficiary's actual daily tasks. As such, the AAO cannot conclude that the beneficiary will primarily perform managerial or executive duties. For this reason the petition cannot be approved.

EAC 01 232 52430

Page 7

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.