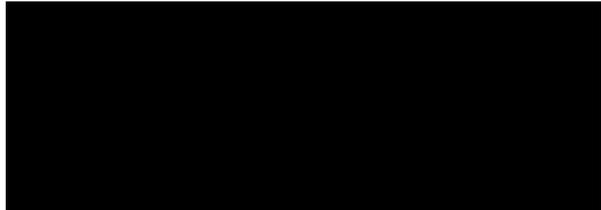


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: WAC 01 199 51977 Office: CALIFORNIA SERVICE CENTER Date: APR 27 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: SELF-REPRESENTED

PUBLIC COPY

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

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.

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Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a property management and real estate enterprise. It seeks authorization to employ the beneficiary temporarily in the United States as its director for business development. The director denied the petition concluding that the petitioner failed to establish that it has a qualifying relationship with a foreign organization and that the beneficiary would be employed in a managerial or executive capacity. On appeal, the petitioner submits a brief with additional documentation addressing 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 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(l)(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 (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.
- (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.

The U.S. petitioner states that it was established in 1993 and that it is a subsidiary of China National Cereals, Oils and Foodstuffs Import and Export Corporation (COFCO), located in China. The petitioner seeks to employ the beneficiary in the United States for three years at an annual salary of \$30,000.

The first issue in this proceeding is whether the petitioner has established that it has a qualifying relationship with a foreign organization.

The director denied the petition, noting that "to qualify as a new business the parent company must submit evidence of the size of the United States investment" However, the petitioner is not a new corporation. As it noted on appeal and as previously stated on the original petition, the petitioner was established in 1993,

eight years prior to the time it filed the instant petition. Therefore, the director's comment is inaccurate and is hereby withdrawn.

The director also noted that the stock certificate submitted in response to the request for additional evidence is insufficient for the purpose of establishing the existence of a qualifying relationship.

Consequently, on appeal, the petitioner submits its financial statements for the relevant time period. The statement identifies the petitioner as COFCO's subsidiary and indicates that all of the petitioner's stock is owned by the parent entity. In addition, the petitioner submits the parent corporation's 38-page published brochure in which the petitioning entity is listed among the foreign entity's numerous foreign branches. After a thorough review of the additional evidence submitted on appeal, the AAO concludes that the petitioner has overcome the portion of the director's denial that addresses the issue of a qualifying relationship.

The remaining issue in this proceeding is whether the petitioner submitted sufficient evidence to establish that the beneficiary's position in the United States will be in a managerial or executive capacity.

In regard to this issue, the director noted that the petitioner provided an organizational chart that showed only six employees while claiming on the petition that it employs 144 people. However, a brief review of the petitioner's chart suggests that the director did not review the chart in its entirety resulting in the incorrect conclusion that the petitioner provided misleading information. Rather than reviewing the organizational chart in its entirety, the director apparently reviewed only that portion of the chart that directly pertains to the beneficiary and her prospective subordinates. As the director's determination was based on her own mistaken observation it will be withdrawn.

The director also concluded that based on the nature of the petitioner's business "the beneficiary will primarily be involved in searching for new customers and negotiating contracts with its customers." However, as CIS's prior request for additional evidence did not specifically ask the petitioner to provide an hourly or percentage breakdown of the beneficiary's duties, it is unclear as to how the director determined which of the listed duties the beneficiary would be primarily performing. Furthermore, the director concluded that the beneficiary's duties will be those of a first line supervisor, market analyst, and financial manager. However, there is no indication that the director has considered the educational levels or job duties of the beneficiary's subordinate staff prior to reaching her conclusion. In the instant case, all but one individual of the beneficiary's subordinate staff are professional employees who perform marketing and financial services. Thus, there is no clear indication as to how the director reached her conclusion regarding what the beneficiary would primarily be doing.

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 been met.

ORDER: The appeal is sustained.