



U.S. Department of Justice  
Immigration and Naturalization Service

D7

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[Redacted]

File: WAC 97 169 50990

Office: California Service Center

Date: AUG 15 2000

IN RE: Petitioner:  
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:

[Redacted]

Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 the Service 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.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrence M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner, a manufacturer, importer, and exporter of garments and fabrics, seeks to employ the beneficiary temporarily in the United States as its branch manager. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel argued that the beneficiary has been and will be employed in a primarily managerial or executive capacity, regardless of the number of employees in the U.S. office.

The Associate Commissioner dismissed the appeal reasoning that the Service's finding was based on the petitioner's own statements, and that, based on the evidence presented, the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity.

On motion, counsel states that the decision "fails to address any of the grounds of appeal raised."

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.

The United States petitioner was established in 1989 and states that it is a branch of the foreign entity, Sang Il Industrial Co., Ltd. The petitioner seeks to employ the beneficiary at an annual salary of \$40,000.

At issue in this proceeding is whether the beneficiary will be employed in the United States 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.

As already discussed extensively by the director and the Associate Commissioner, the record indicates that as of the filing date of

the petition, the U.S. entity had five employees, the beneficiary as branch manager, an administrative officer, and three additional unidentified employees. The Associate Commissioner noted that no comprehensive description of the additional employees was submitted. The Associate Commissioner concluded that, in light of its organizational hierarchy at the time of the filing of the petition, the U.S. entity did not contain the organizational complexity to support a managerial/executive position.

On motion, counsel argues that the decision fails to address how the beneficiary does not qualify under the concept of a functional manager. Counsel further argues that the "record is completely clear and abundant that the beneficiary manages the sales function within the United States of a foreign textile manufacturing firm." No additional evidence in support of the motion to reopen has been submitted.

In review, counsel's argument presented on motion is not sufficient in overcoming the objections of the director and the Associate Commissioner. The petitioner has not provided the Service with any account of executive or managerial decisions necessary to oversee and manage this particular business. The record fails to demonstrate exactly what the beneficiary has been and will be doing on a daily basis. It must be evident from the documentation submitted that the majority of the beneficiary's daily activities have been and will be primarily managerial or executive in nature. The petitioner has provided no comprehensive description of the beneficiary's daily duties to establish this. Simply stating that the beneficiary has demonstrated his leadership and successfully led his company into business success, is not sufficient in establishing the beneficiary's managerial or executive responsibilities. The petitioner has not demonstrated that the beneficiary has been or will be functioning at a senior level within an organizational hierarchy. 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 decision of the Associate Commissioner dated June 17, 1999, is affirmed.