



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



File: WAC 99 158 52041 Office: CALIFORNIA SERVICE CENTER

Date: AUG 15 2000

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)

IN BEHALF OF PETITIONER:



Public Copy

Generalizing and reducing 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

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, an international trading company, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its vice-president. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. and foreign entities, or that the beneficiary has been and will be employed in the U.S. in a primarily managerial or executive capacity.

On appeal, counsel argues that the Service failed to examine the evidence submitted in its entirety and made erroneous findings as its basis for the denial.

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.

8 C.F.R. 214.2(l)(14)(ii) states 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 1996 and states that it is a wholly owned subsidiary of [REDACTED] located in China. The petitioner seeks to employ the beneficiary as vice-president for two years at an annual salary of \$36,000.

The first issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the U.S. and foreign entities.

8 C.F.R. 214.2(1)(1)(ii)(G) states:

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.

8 C.F.R. 214.2(1)(1)(ii)(K) states:

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.

In this case, the petitioner has submitted a copy of a stock certificate and the corresponding stock registry, representing the issuance of 10,000 shares of stock. Upon review, the certificate demonstrates that the claimed parent company owns 51 percent of the issued stock. In support of the stock transactions, the petitioner submitted copies of the petitioner's bank statements, a stock certificate and a stock ledger, and money transfer notifications.

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 of Scientology International, 19 I&N Dec. 593 (BIA 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 of Scientology International, *id.*

As general evidence in a non-immigrant petition for an intracompany transferee, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See Matter of Siemens Medical Systems, Inc., *supra*. Without full disclosure of all relevant documents, the Service is unable to determine the elements of ownership and control.

Furthermore, a certificate of stock is merely written evidence that a named person is owner of a designated number of shares of stock in a corporation. Black's Law Dictionary (Fifth Edition, West Publishing Company, 1979). The regulation at 8 C.F.R. 204.5(j)(3)(ii) specifically allows the director to request additional evidence in appropriate cases. As ownership is a critical element of this visa classification, the Service may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

For immigration purposes, the issuance of a piece of paper titled "stock certificate" is not conclusive as to whether a qualifying relationship exists between a petitioner and a foreign parent company. Otherwise, the intent of Congress could be circumvented by the issuance of stock certificates to a foreign company that has

no knowledge of the purported corporate relationship or to a strawman or company that exists on paper only. Cf. Matter of Rhee, 16 I&N Dec. 607, 610 (BIA 1978) (stating that the issuance of a "certificate of ordination" is not conclusive as to who qualifies as a minister for immigration purposes).

Upon review, the petitioner has not established that the foreign parent company has purchased an ownership interest in the petitioning company. Upon incorporation, the petitioner issued stock certificate number 1, representing 10,000 shares, to [REDACTED]. As evidence of the actual purchase of stock, the petitioner submitted a copy of the company's business checking account statement for the period from December 26, 1996 through January 8, 1997, showing a deposit of \$5,000.00, dated December 26, 1996, and \$83,370.00, dated January 3, 1997. As evidence that the foreign parent company contributed these funds, the petitioner submitted a letter from Candusa Technology Limited, a company which claims that they "carried out these money transfers." On appeal, counsel submitted another letter from [REDACTED] which stated that the foreign entity, through [REDACTED] wired a total of \$100,000 to the U.S. entity, however, "the original wiring receipt of the bank was discarded." No evidence was submitted to establish the claim that the funds were transferred. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). For this reason, the petitioner may not be approved.

The remaining issue in this proceeding is whether the beneficiary has been or will be employed in the United States in a primarily executive or managerial 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 a response to the Service's request for additional information, the vice president of the petitioning company provided a description of the beneficiary's duties as follows:

In this position, [the beneficiary] also serves as a member on [redacted]'s Board of Directors and participates in all major corporate decisions. [The beneficiary] has performed very well her duties in this position which included: manage the day-to-day operations of business matters; act as president when the president is absent; Manage personnel matters; and keeping record of the Board of Directors. [The beneficiary's] dutiful performance of her role has contributed in a major way to [redacted]'s rapid development during

its inception period of business in the United States; the gross income of [REDACTED] for the fiscal year 1997 was \$700,000, and the gross income for the fiscal year 1998 increased to over \$2 million.

On appeal, counsel argues that:

[The beneficiary] is the acting President of [REDACTED] in the absence of its President, who is also the President of the parent company. The President is based primarily in China, making only the occasional visit to the Petitioner's base of operations. [The beneficiary] exercises wide latitude when making decisions regarding personnel matters, financial matters, marketing strategies, vendor contracts, and service contracts. She is accountable only to the President of Parent. Petitioner has experienced significant growth since its inception indicating that [the beneficiary] has been primarily engaged in overseeing Petitioner's financial matters and marketing strategies, as defined under "executive capacity." 8 CFR 214.2(1)(1)(ii). This growth will enable Petitioner to expand its personnel base and require [the beneficiary] to devote more time to management related personnel matters. These duties clearly fall within the "managerial capacity" defined in the regulations. 8 CFR 214.2(1)(1)(ii).

Despite counsel's argument, the evidence provided is not sufficient in demonstrating that the beneficiary has been and will be employed in a primarily managerial or executive capacity. It must be evident from the documentation submitted that the majority of the beneficiary's actual daily activities have been and will be managerial or executive in nature. The description of duties provided is too general to convey any understanding of exactly what the beneficiary does on a daily basis. Simply stating that the beneficiary oversees and manages the company's financial operations; controls marketing strategies; makes policy decisions, develops goals; and reviews and manages the day-to-day operation of business matters, without further elaboration, is not sufficient in demonstrating the beneficiary's managerial and executive responsibilities.

The fact that an individual has a managerial or executive title does not necessarily establish eligibility for classification in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. The petitioner has not sufficiently demonstrated that the beneficiary has been or will be primarily engaged in managing or directing the management of a function, department, subdivision, or component of the U.S. entity. Based on the evidence submitted, it cannot be found that the beneficiary has

been or will be employed in a primarily managerial or executive capacity. For this additional reason, the petition may not be approved.

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.