



U.S. Department of Justice

Immigration and Naturalization Service

DM

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

[REDACTED]

File: EAC-98-119-55987

Office: Vermont Service Center

Date:

AUG 21 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)

Public Copy

IN BEHALF OF PETITIONER:

[REDACTED]

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

  
Terrance M. O'Reilly, Director  
Administrative Appeals Office

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

The petitioner is engaged primarily in the import and sale of finished and raw fabrics, yarns and textiles. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel had provided additional information in support of the appeal.

The Associate Commissioner dismissed the appeal reasoning that the petitioner had not shown that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On motion, counsel argued that the beneficiary was employed in a primarily managerial or executive capacity.

The Associate Commissioner found that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity. The Associate Commissioner also found, beyond the decision of the director, that the petitioner had not established that there is a qualifying relationship between the U.S. and foreign entities.

On second motion, counsel states in part that:

██████████ detailed job description, company's organizational structure showing Beneficiary's position in the company's hierarchy, payroll record, reference letters from various United States companies, sample documents including litigation papers of the United States court bearing the Beneficiary's title and signature, China parent company's affidavit and the letter from petitioner's bank all together strongly establish that the Beneficiary has been or will be employed in a primarily managerial and executive capacity.

The Petitioner is a subsidiary of a Chinese company with more than 200 million US dollars annual sales. It hires hundred [sic] of people in China manufacturing textile

product, performing quality control, declaring customs, booking and shipping the good[s]. Majority of work for fulfilling the order is done by its parent company in China, so the petitioner does not need more people here. One of its functions is to assist its parent company by obtaining the orders through old connection [sic]. Most of clients have been doing business with us for more than 7 years. Petitioner also is responsible for resolving the business controversies such as filing lawsuit [sic]. The parent company needs a decision-maker here to deal with these critical issues and make decisions. Also the nature of the business is seasonal. That is why employee's salary in 1997 shown low [sic], but they are full-time when they are hired.

As to the relationship between the Petitioner and its parent company, the Accountant of the petitioner did put the name of its parent company on a [sic] Petitioner's 1997 Federal Tax Return of form 1120 & form 5472...that was attached to State of New York Tax Return. Account [sic] admitted it is her error not to put the parent company's name in the final portion of Form 107 on the 1997 General Business Corporation Tax Return for the State of New York.

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.

At issue in this proceeding is whether 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 his decision, the Associate Commissioner noted that the petitioner failed to declare the name of its parent corporation in the final portion of question 107 on a 1997 General Business Corporation tax return for the State of New York.

The record contains the following:

Certificate of Incorporation for the U.S. entity, [REDACTED] dated August 5, 1992, reflecting that its total number of authorized shares as 200;

Share Certificate #1 dated September 5, 1992, reflecting that [REDACTED] owns 200 of the authorized 200 shares of the U.S. entity, China American Import & Export Corporation;

Letter dated February 24, 2000, from [REDACTED], indicating that the name of the parent company had been omitted from the U.S. entity's 1997 General Business Corporation Tax Return due to their oversight.

The record demonstrates that the U.S. entity, [REDACTED] is 100% owned and controlled by the foreign entity, [REDACTED]. Therefore, a qualifying subsidiary relationship has been shown to exist between the U.S. and foreign entities. As such, this portion of the Associate Commissioner's objections has been overcome.

Another issue in this proceeding is whether the beneficiary has been and will be employed 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.

The record indicates that the U.S. entity was incorporated on August 5, 1992, and the beneficiary was granted L-1A status from March 22, 1995 through March 22, 1998. The present petition was filed on March 9, 1998. Information on the petition indicates that at the time of its filing, the U.S. entity had four employees. In a letter dated February 8, 1998, the U.S. entity's manager states in part that:

Our company employs four (4) individuals. They are: [REDACTED]

The record contains the following:

U.S. entity's 1997 corporate tax return reflecting \$1,332,584 in gross receipts or sales; \$0 in compensation of officers; and \$34,735 in salaries and wages;

1997 W-2 forms reflecting the following employees and wages: the beneficiary, \$25,333.34; [REDACTED]

Counsel argues that the functions of the U.S. entity and the beneficiary as its president are to obtain orders for the parent company and resolve its legal issues. When seeking classification of an alien as a manager based on managing or directing a function, the petitioner is required to establish that the function is essential and the manager is in a high-level position within the organizational hierarchy, or with respect to the function. The record must demonstrate that the beneficiary will be primarily managing or directing, rather than performing, the function. The record must further demonstrate that there are qualified employees to perform the function so that the beneficiary is relieved from performing nonqualifying duties. Evidence in the record is not persuasive that the beneficiary has a full-time, subordinate staff to perform the U.S. entity's functions so that the beneficiary is relieved from performing nonqualifying duties. Rather, the record indicates that the beneficiary is the U.S. entity's only full-time employee. As such, the record does not persuasively demonstrate that the beneficiary functions or will function at a senior level within an organizational hierarchy, or with respect to a function. Consequently, the petitioner has not sufficiently demonstrated that the beneficiary is employed or will be employed in a primarily managerial or executive capacity. 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 decisions of the Associate Commissioner dated June 21, 1999, and February 2, 2000, are affirmed.