



U.S. Department of Justice
Immigration and Naturalization Service

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

[Redacted]

File: SRC 00 102 53962 Office: Texas Service Center

Date: JAN 8 2001

IN RE: Petitioner: [Redacted]
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 the subject 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

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Mary C. Mulrean, Acting Director
Administrative Appeals Office

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

The petitioner, a company involved in international sales of general merchandise, 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 it has been doing business continuously for the previous year, or that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel submits a brief and additional documentation in support of the appeal.

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)(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 U.S. petitioner states that it was established in 1998 and that it is a wholly-owned subsidiary of [REDACTED] Inc., located in Guangzhou, China. The petitioner declares six employees and a projected gross annual income of approximately \$230,480. It seeks to extend the petition's validity and the beneficiary's stay for three years at an annual salary of \$25,000.

The first issue in this proceeding is whether the U.S. entity has been doing business continuously for the previous year.

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

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The director noted in his decision that the petitioning company was established in August of 1998, that the visa petition for the new office is valid from March 8, 1999 to March 7, 2000, and the new office extension was filed in February of 2000. The director further noted that the petitioner submitted invoices from January 1999 to July of 1999, and concluded that "the mere purchase of goods does not establish a regular, systematic, and continuous provision of goods and services."

On appeal, counsel submits evidence in the form of the petitioner's 1999 corporate income tax return and a financial statement dated March 31, 2000, and states that:

In 1999, the company's first full year of operation, it had gross sales in excess of \$230,000.00. It paid salaries, wages and officer compensation of nearly \$49,000.00. In the first quarter of 2000, the company had gross sales in excess of \$72,000. The primary selling season of the company's products is summer when companies are making purchases for the Christmas season. The company projects annual revenues in 2000 to exceed \$300,000.00.

The petitioner has provided sufficient additional evidence to demonstrate that the petitioning entity is doing business. The evidence presented is persuasive in demonstrating that the petitioning entity is engaged in the regular, systematic, and continuous provision of goods and/or services. Consequently, the petitioner has overcome this portion of the director's decision.

The other issue in this proceeding is whether the beneficiary has been or 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 petitioner describes the beneficiary's duties in part as follows:

[The beneficiary] has been working diligently in the past year to nurture the new subsidiary in the United States. As the President of [REDACTED] Inc., [the beneficiary's] job duties at the subsidiary include, but are not limited to the following:

- (i) [The beneficiary], as captain of the ship, bears full responsibility for leading the tasks of formulating and implementing the strategic plan for the U.S. operations as a whole. [The beneficiary] functions as chief direction-setter, chief objective-setter, chief strategy-maker and chief strategy-implementer for the U.S. operations. What [the beneficiary] views as important moves to the top of the strategic priority list, and [the beneficiary] has the final word on key strategic decisions.

(ii) As the President of the U.S. subsidiary, [the beneficiary] thinks strategically about the company's position and about the impact of the changing conditions of the new business environment in the United States. [The beneficiary] has to monitor the external situation closely enough to know when to institute strategy change. To be more specific, [the beneficiary's] strategy-making efforts include (a) providing better guidance to the entire U.S. operations on the crucial point of what goal and mission the company wants to accomplish; (b) making management more alert to change, new opportunities, and threatening developments; (c) providing managers with a much-needed rationale to evaluate competing budget requests for investment capital and new staff; (d) helping to unify the numerous strategy-related decisions by managers across the company; (e) creating a more proactive management posture and counteracting tendencies for decision to be reactive and defensive.

On appeal, counsel states that:

There is no evidence to support the Service conclusion that [the beneficiary] has been primarily performing the daily duties of a sales representative, shipping clerk or bookkeeper. All of these positions have been filled by experienced employees whom he has hired. As the company continues its growth and development, it anticipates hiring further sales staff and even greater division of labor among the corporate functions-Sales and Marketing, Finance, Transportation management and control, Administration. [The beneficiary] has the complete confidence of the parent company Board of Directors and is the sole liaison between the US operation and the parent. In all aspects, [the beneficiary] has been acting in an executive capacity, developing a chain of authority that begins with him and branches out downward. His responsibility is company wide, while the other employees function within their specific departments.

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as formulating business strategies, identify threats to the company, making management more alert to change, and providing managers with rationale to evaluate competing budget requests for investment capital and new staff, and creating a more proactive management team, are without any context in which to reach a determination as

to whether they would be qualifying. The use of the position title of "president" is not sufficient.

The record contains insufficient evidence to demonstrate that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary has been or will be managing the organization, or managing a department, subdivision, function, or component of the company. The petitioner has not shown that the beneficiary has been or will be functioning at a senior level within an organizational hierarchy other than in position title.

Further, the petitioner's evidence is not sufficient in establishing that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing nonqualifying duties.

Based on the evidence furnished, 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.