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: EAC 98 177 53277 Office: Vermont Service Center Date: JAN 18 2001

IN RE: Petitioner: [redacted]
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)

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

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont 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 the design, import, marketing and sales of silk garments, 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 demonstrated that the beneficiary had been or 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 1997 and that it is a wholly-owned subsidiary of [redacted] Company, located in [redacted] of China. The petitioner declares three employees and a gross annual income of approximately $193,075.00. It seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of $32,160.

At 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 petitioner describes the beneficiary's duties as follows:

> As President of [redacted] [the beneficiary] is responsible to develop and implement corporate policy, hire and administer staff, develop budget and marketing plans, and secure favorable loans and/or lines of export credit, if necessary. He is also the primary executive responsible to conduct negotiations with American wholesale and retail clothing companies to market and promote our exclusive lines of China manufactured silk garments, and also to promote the development of our private label business. These are the duties he has been performing and will continue to perform in the future.

The petitioner submitted a copy of its 1997 U.S. Corporation Income Tax Return which showed that it paid $12,000 in salaries and wages.

The director noted in his decision that:

> Your description of the duties of your staff is insufficient to establish the beneficiary's position has been and will be executive or managerial in nature. The duties are described in an abstract form with no indication as to their actual level of executive authority. Further, it is noted on the instant petition you claim to employ three people. However, you have submitted financial documentation which indicates the beneficiary is the only person to receive compensation in fiscal year 1997. Therefore, it is not clear who you employ and what their duties and responsibilities are.

On appeal, the Director of the Board/Chairman of the Board of [redacted] describes the beneficiary's duties as follows:

> When the company's business has been established, [the beneficiary's] duties are to perform essential executive

functions of president of the company in all aspects of business decision making, policy making and personnel management; establish the company management structure, office rules, operation guidelines, and communication protocol between offices abroad and within the U.S.; formulate immediate goals for expansion and long term business policies in accordance with the parent company's direction; ensure our company's compliance with regulations, guidelines, business direction and profit goals established and mandated by the parent company; direct the preparation of financial plans and annual budget reports for the parent company's review; guide the company through the web of American, Chinese and other international laws and regulations concerning the import and sale of goods; research and familiarize himself with the American and Chinese markets as well as the relationship between the two markets; amend and/or modify company's directions in response to the changing markets; meet and/or discuss with parent company to form cooperative effort in response to the changing market; personally host or delegate the responsibility of hosting potential and/or current clients and customers of the company; personally host and entertain officers of the parent company in New York; create new company directives in an effort to expand business; exercise wide latitude in discretionary decision-making power; exercise personnel management authority concerning hiring, discharging, promoting and transferring of subordinates; and commit 90% of his time to performing executive duties.

The Director of the Board/Chairman of the Board further states that the petitioner uses commissioned sales representatives who do the operational and administrative work in order to free the company's managers and deputy managers to handle executive and managerial duties.

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. Although the petitioner's descriptions are lengthy, there is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as developing and implementing corporate policy, hiring and administering staff, developing budget and marketing plans, conducting negotiations with American wholesale and retail clothing companies, and promoting the development of a private label business, are without any context in which to reach a determination as to whether they would be qualifying. Other duties such as personally hosting and entertaining officers of the parent company have not been demonstrated to be managerial or executive in nature. 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.

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 reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has submitted insufficient evidence to establish that the beneficiary's employment in the United States will be temporary. Matter of Isovic, 18 I&N Dec. 361 (Comm. 1980); 8 C.F.R. 214.2(l)(3)(vii). As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

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.