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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: WAC 99 077 50259 Office: CALIFORNIA SERVICE CENTER Date: 2 7 FEB 2002

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

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was revoked by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal.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

The petitioner seeks authorization to employ the beneficiary as an intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L) as its sales manager. The director determined that the petitioner had not responded to a notice of intent to revoke and entered a decision revoking the previously granted petition.

The director sent a notice of intent to revoke the nonimmigrant petition previously approved by the Service on March 8, 2000. The petitioner submitted a response to the notice. According to a postmarked return receipt request, the response was timely received by the Service on March 23, 2000. The Service, however, revoked the previously approved petition on April 26, 2000, stating that the Service had not received a response in rebuttal to the notice of intent to revoke the petition.

On appeal, counsel for the petitioner submits a copy of the postmarked return receipt request and the two documents submitted in response to the director's notice of intent to revoke.[1]

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)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying

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[1] The petitioner subsequently submitted a new petition to the Service for the same beneficiary, Receipt Number WAC 00 045 50838 on December 3, 1999. The director denied the petition and the petitioner submitted an appeal to the Associate Commissioner. The appeal was dismissed because the petitioner had not established that the beneficiary had been or would be employed in a managerial or executive capacity.

organizations as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

The issue in this proceeding is whether the petitioner has established that 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:

The term "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:

The term "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

iii. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner is a California corporation incorporated in 1991. It appears to be a wholly-owned subsidiary of a Chinese corporation. In the petition, the petitioner indicated that it was replacing an individual whose L-1A status was expiring and who was returning to the parent company in China. The petitioner stated its intent was to hire the beneficiary of this petition as the replacement of the reassigned individual.

The petitioner described the beneficiary's job duties as sales manager as follows:

> [The beneficiary] will explore the US market, develop and control sales program; review market analyses to determine customer needs, volume potential, price schedules, and discount rates; direct local technicians or technicians sent by our China parent company to provide after sales service to the existing customer throughout the American area. Represent company at trade shows to promote products; analyze and control expenditures to conform to budgetary requirements; assist engineering division in China to prepare manuals and technical publications to meet US standards; direct market research and development to better target our future market. Hire and fire independent sales representatives; design sales programs and strategies, and assign sales territories to our local independent sales representatives, frequent meetings with sales representative of sales progress and resolve problems. Report directly to the president of sales progress and futures to ensure sales activities meet with management's goal.

The director requested additional information in the notice of intent to revoke including an organizational chart, a description of the beneficiary's job duties and responsibilities for the petitioner and the job duties and responsibilities of the petitioner's other L-1A employees.

In response, the petitioner submitted an organizational chart dated as of April 15, 2000 showing two sales engineers and a secretary reporting to the beneficiary. The petitioner re-submitted a description of the beneficiary's job duties and responsibilities similar to the description submitted in the

petition. The petitioner also provided job descriptions for a president, vice-president, two sales engineers and a secretary. The petitioner also noted that it did not employ any other L-1A beneficiaries, indicating that the beneficiary of this petition would replace another L-1A employee who had recently returned to China.

As noted above, the director did not consider the response of the petitioner and revoked its previous approval.

On appeal, counsel re-submits an organizational chart for the petitioner and the statement of the petitioner briefly describing the beneficiary's duties as well as the duties of its other five employees.

On review of the complete record, the petitioner has not provided sufficient information to demonstrate that the beneficiary will be directing the management of the organization or a major component or function of the organization. There is also insufficient information in the record to conclude that the beneficiary will be managing the organization or a department, subdivision, function, or component of the organization. The petitioner provides no information describing the day-to-day activities of the beneficiary. The description of the beneficiary's job duties is vague and general in nature. Given the lack of concrete information, the record does not support a conclusion that the beneficiary is directing the management of the organization or managing the organization or a department or subdivision of the organization.

In addition, the petitioner has not provided sufficient information to show that the beneficiary will supervise and control the work of other supervisory, professional, or managerial employees. The job duties of the three individuals under the proposed beneficiary's supervision are not professional in nature. Section 101(a)(32) of the Act states that the term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers. In this case, the sales engineers are selling equipment and providing technical services to petitioner's clients. These duties do not appear to relate to engineering duties but instead appear sales related. The title, sales engineer, is not sufficient to place an individual with that title in the professional category. It appears, at most, the beneficiary will be acting as a first-line supervisor to non-professional employees. Again, this information only serves to emphasize that the beneficiary will not be acting in a managerial capacity.

Finally, the record as presently constituted does not demonstrate the petitioner has sufficient staff to relieve the beneficiary from performing non-qualifying duties. At the time the petition was filed the petitioner had been in business for eight years and employed two executives, two sales persons and a secretary. There

is insufficient evidence in the record to demonstrate that the petitioner's organizational structure will relieve a third executive or manager from performing non-managerial duties. Indeed, the petitioner's description of the beneficiary's job duties includes such tasks as "direct[ing] local technicians," "represent[ing] company at trade shows," "prepare[ing] manuals and technical publications," and "frequent meetings with sales representatives." As the beneficiary will be performing these non-managerial tasks himself, rather than delegating the tasks to subordinate employees, the record does not establish that the petitioner has sufficient staff to relieve the beneficiary from performing non-qualifying duties.

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.