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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



File: EAC 99 165 51280 Office: VERMONT SERVICE CENTER

Date: JAN 22 2002

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:

SELF-REPRESENTED

**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. Weimann, 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 is described as an import and export business specializing in manufacturing equipment. The petitioner seeks to employ the beneficiary in the United States as its vice-president. The director determined that the petitioner was considered a new office for immigration purposes but that the petitioner had not established that the beneficiary would be employed in a primarily executive or managerial position or that the petitioner would be able to support such a position in one year.

On appeal, the petitioner asserts that the beneficiary will be employed in a primarily executive or managerial position and re-submits documents.

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 organizations as defined in paragraph (l)(1)(ii)(C) 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 petitioner was incorporated in the state of New York in November of 1998 and the petition was filed in April of 1999. The petition requests an L-1A nonimmigrant visa for the beneficiary. The petitioner qualifies under the new office definition in 8 C.F.R. 214.2(l)(1)(ii) that states in pertinent part that:

(F) New office means an organization which has been doing business in the United States through a parent,

branch, affiliate, or subsidiary for less than one year.

The issue in this proceeding is whether the petitioner has provided sufficient evidence to comply with the requirements set forth in 8 C.F.R. 214.2(l)(3)(v).

8 C.F.R. 214.2(l)(3)(v) states that if a petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The petitioner initially submitted a statement that included information on the issue of the position proposed for the beneficiary. The statement essentially paraphrased the definition of "executive" as found in the regulations at Section 101(a)(44)(B) of the Act. The petitioner also provided a breakdown of the beneficiary's proposed duties on an hourly basis. The petitioner also included a proposed responsibility and job description for management employees that would be transferred from the parent company in China. The proposed positions included, a president, a vice-president position to be filled by the beneficiary, a manager of the marketing department, a salesman and a secretary. The statement also briefly outlined a business

plan for the petitioner. The business plan set forth the start-up capital for the petitioner at \$50,000 to \$100,000. The business plan also indicated that the petitioner would only employ five to six employees in the first two years of operation. Finally, the business plan indicated that the company was expected to operate at a loss the first year of activity and then increase the income in the second year to \$500,000 to \$650,000. The petitioner noted that its proposed business activities would be the "import and export of manufacture of products, provision of information on latest technology and economic development as well as services in search of international economic cooperation partners."

The director requested that the petitioner supply additional evidence that would establish that the petitioner would be able to support a managerial or executive position within one-year of approval of the petition. The director indicated this information should include an additional description of the beneficiary's proposed job duties, and an organizational chart of the foreign entity including the beneficiary's position on the chart and the foreign entity's business plan for the petitioner.

In reply, the petitioner re-submitted the same information contained in the statement and the same documentation initially submitted with the petition.

The director focussed his determination on the lack of information provided regarding the beneficiary's proposed duties for the United States entity and determined that the petitioner had not established that it would be able to support a managerial or executive position in one year.

On appeal, the petitioner re-submitted its articles of incorporation, an invoice from an international freight consolidator, a power of attorney for a custom broker to act on the petitioner's behalf, a warehouse lease for T.B.T. International Corp., an unaudited interim balance sheet ending May 1999, and documents relating to a shipment of vitamins. The petitioner asserted that the Service had been unfair in the denial of the petition and indicated that it was proceeding with the start up of its office. The petitioner reiterated its need for the services of the beneficiary to act as its vice-president.

The petitioner's statements are not persuasive. The record, as it stands, does not contain sufficient information to indicate that it would be able to support an executive or managerial position for the beneficiary in one year. The petitioner has not provided adequate supporting documentation of the proposed nature of its office or its organizational structure. The Associate Commissioner is mindful that this is a start up company and that the office may expand in different directions once organized, however, the petitioner has failed to concretely describe its nature and organizational structure. The petitioner's explanation of its proposed business is vague and general. The

petitioner's statement that it does not plan to hire more than five to six employees in the first two years of operation, does not support a finding that the petitioner will be able to support an executive or managerial position one year from the approval of the petition. This statement along with other information contained in the record implies that the business in two years would still consist of three "managers", a salesman and a secretary.

On review, the record does not establish that the petitioner, within one year of the approval of the petition, will support an executive or managerial position.

Beyond the decision of the director, the petitioner also has not established that the beneficiary was employed for one continuous year in the three-year period preceding the filing of the petition in an executive or managerial capacity. The petitioner did not submit an adequate description of the organizational structure of the foreign entity. The organizational chart submitted only provides position titles. The chart does not include the beneficiary's position. The statements submitted by the petitioner only generally describe the beneficiary's duties for the foreign entity and though the petitioner states that the beneficiary supervised sixty employees, this is not supported by documentary evidence. 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). As the appeal will be dismissed for the reason stated above, these issues 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.