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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 98 144 52617 Office: VERMONT SERVICE CENTER Date: 06 MAR 2002

IN RE: Petitioner
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)

IN BEHALF OF PETITIONER:



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 denied by the Director, Vermont Service Center. The Associate Commissioner for Examinations dismissed the subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion is granted. The previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner, a foreign law consulting company, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its vice-president. The director determined that the petitioner had failed to demonstrate that the beneficiary had been functioning and would continue to function in a primarily managerial or executive capacity. The Associate Commissioner affirmed the director's decision.

On motion, the petitioner disagrees with the factual findings and conclusions by the director and the Office of Administrative Appeals and asserts that the beneficiary is employed in a primarily managerial or executive capacity.

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 involved specialized knowledge.

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:

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

The petitioner is self-described as a legal consulting firm with its main business activity the development of a client base and provision of legal consulting services concerning legal matters in China. The petitioner indicates that its attorneys interview clients and provide preliminary opinions in the United States, and then refers those clients to the parent firm for representation. The petitioner also notes that it occasionally assists Chinese clients in initiating or defending lawsuits in the United States by working in cooperation with U.S. attorneys.

On March 28, 2000, the Associate Commissioner dismissed the petitioner's appeal determining that the record did not support a finding that the beneficiary engaged in managerial or executive duties. The Associate Commissioner determined that the petitioner had not provided a comprehensive description of the beneficiary's duties and had not shown that the beneficiary had been or would be functioning at a senior level within an organizational hierarchy other than in position title. The Associate Commissioner also determined that the petitioner had not established that the

beneficiary had been or would be managing a subordinate staff of professional, managerial, or supervisory personnel who would relieve him from performing non-qualifying duties.

On motion, The petitioner re-states the beneficiary's job duties as originally described in the petition as follows:

- (1) Devising business development plans;
- (2) Supervising execution of business plans;
- (3) Deciding whether to accept cases in the United States for representation in China;
- (4) Negotiating and executing agreements with clients;
- (5) Providing consulting services to clients;
- (6) Recruiting and firing associates and support staff; and communicating with Shu Jin China for coordination between parent and subsidiary and better representation of overseas clients.

On motion, the petitioner concurs that of the above described duties, devising development plans and supervising execution of business plans may be considered general and broad terms. However, petitioner asserts that the duties of deciding whether to accept cases in the United States for representation in China, negotiating and executing agreements with clients, and providing consulting services to clients are sufficiently specific to describe the beneficiary's actual job duties. The petitioner also includes a slightly revised description of job duties and hours for a legal assistant and paralegal to demonstrate that the paralegal is a full-time employee. The petitioner also notes that similar descriptions of the beneficiary's job duties had been submitted in previous petitions that were approved by the Service.

The information submitted on motion is not persuasive. The description of the beneficiary's job duties does not include information that allows a conclusion that the beneficiary manages or directs the organization. In addition, the record does not include information that the beneficiary supervises managerial, supervisory or professional employees that relieve him from primarily performing non-qualifying duties. Instead the petitioner's more specific job description of the beneficiary's job duties confirms that the beneficiary is actually performing the duties required to operate the business. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. Matter of Church Scientology International, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner's implied assertion that the previous petition

approvals for the beneficiary's classification based on similar job descriptions should now establish that the beneficiary is acting in a managerial or executive capacity is not persuasive. As established in numerous decisions, the Service is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See, e.g., Sussex Enqq. Ltd. v. Montgomery, 825 F.2d 1084, 1090 (6th Cir. 1987); *cert denied* 485 U.S. 1008 (1988); Matter of Church Scientology Int'l., 19 I&N Dec. 593, 597 (BIA 1988).

On review, the record does not support a finding that the beneficiary primarily engages in managerial or executive 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.