D7

U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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

[redacted]

File: EAC-00-181-50049 Office: Vermont Service Center Date: 8 - MAR 2002

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)

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

Myra L. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: This is a motion to reopen the Associate Commissioner for Examination's decision dismissing the appeal of the denial of the nonimmigrant visa petition. The motion to reopen will be granted and the previous decisions of the director and the Associate Commissioner will be affirmed. The petition will be denied.

The petitioner is engaged in the manufacture, processing, wholesale, import and export of silk related products. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its manager. The director determined that the petitioner had not established that the beneficiary has been and will be employed primarily in a managerial or executive capacity. The director's decision was affirmed by the Associate Commissioner for Examinations on appeal.

The Commissioner also stated in his decision that the petitioner had not established the financial status of the U.S. entity, that there is a qualifying relationship between the U.S. and foreign entities, or that the foreign entity is doing business.

On motion, counsel states that the beneficiary will be in a managerial position. Counsel also submitted evidence to prove the petitioning entity is doing business.

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.

The first issue in this proceeding is whether the beneficiary has been and will continue to be employed primarily in a 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.

On motion, counsel submitted purchase orders, payment records, records of business transactions, salesman's commission payment records, bank statements and customs entrance records to show that the company is doing business. However, the petitioner has not submitted any additional evidence which demonstrates that the beneficiary has been and will continue to be employed in a primarily managerial or executive capacity. There is no sufficient evidence to establish that the petitioner employs a subordinate staff of professional, managerial, or supervisory personnel in the

United States who will relieve the beneficiary from performing nonqualifying duties. For this reason, the petition may not be approved.

Further, the additional issues raised by the Commissioner in his decision were not addressed by the petitioner on motion. These issues need to be addressed by the petitioner in any future proceedings.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met. Accordingly, the decisions of the director and the Associate Commissioner will be affirmed.

ORDER: The Associate Commissioner's decision of April 28, 2000 will be affirmed.