

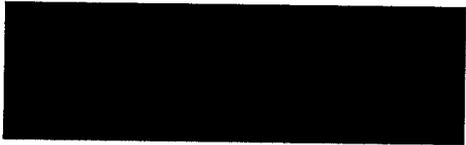


D7

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



File: WAC-99-236-52242 Office: California Service Center Date: **MAY 02 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

for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is an import and export company. It 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 established that the beneficiary would be employed in a primarily managerial or executive capacity and denied the petition.

On appeal, counsel asserts that the conclusion that the beneficiary will not be employed in a managerial or an executive capacity is vague and in violation of Service regulations. Counsel further asserts that the decision relies unduly on the number of employees on the payroll of the corporation and the type of business conducted, while not fully considering other factors demonstrating the beneficiary's 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.

8 C.F.R. 214.2(1)(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 (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.

8 C.F.R. 214.2(1)(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 (1)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (1) (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 1996 and that it is a wholly-owned branch of Shenyang Mulan Furniture City located in the Peoples Republic of China. The petitioner declares six employees and \$1,016,546 in gross annual income. The initial petition was approved and was valid from September 29, 1997 to September 29, 1999, in order to open the new office. The petitioner seeks to extend the petition's validity and the beneficiary's stay for two years at a salary of \$2,200.00 per week.

The issue in this proceeding is whether the beneficiary 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.

On October 5, 1999, the Service requested that the petitioner submit, in pertinent part, the following information:

...Submit a list of all employees from the date of establishment to the present, including: names, job titles, SSN, nonimmigrant status(L-1, H-1B, etc.), beginning dates of employment, wages per week, etc...Submit the United States entity's organizational chart describing its managerial hierarchy and staffing levels. This is best accomplished by indicating:

- current names of executive, manager(s), supervisor(s), the beneficiary's position in the chart;
- the names of other existing employees within each department subdivision;

-clearly indicate all existing employees to be under the beneficiary's supervision in the U.S. including: names, job titles, brief job duties, nonimmigrant status...

In response the petitioner submitted a list of U.S. entity employees. The list contains twelve names, broken down by position as follows; "President/CEO", [the petitioner] status L-1A, [named individual] "Vice-president/CFO", status L-1A, "Secretary/Bookkeeper" [named individual], status PR, "Sales Rep." [named individual], status PR, "Operation Assistant" [named individual] status U.S.C., "Purchasing Agent" [named individual] status PR. The remaining six named individuals were shown as "Resigned", with no explanation as to what position(s) those individuals held.

In addition, the petitioner submitted an "Organizational Chart". The chart contained the name of the employee, the position held, their Social Security Number, their Immigration status and a narrative generalization of the job duties for each position. The chart contained, in pertinent part, the following information:

[The beneficiary] President/ Chief Executive Officer...

Job duties: Plans, develops and establishes policies and objectives of the business; confers with company officials to plan business objectives, to operations between divisions and departments, and to establish reives [sic] objectives and plans in accordance with current conditions; directs and coordinates formulation of financial plans to provide funding for new or continuing operations to maximize returns on investments, and to increase productivity; plans and develops industrial, labor, and public relations policies designed to improve company image and relations with customers, employees, and public; evaluates performance of executives for compliance with established policies and objectives of firm and contributions in attaining objectives. She exercises complete day-to-day discretionary authority over the work of the U. S. subsidiary.

[Named individual] Vice President/Chief Financial Officer...

Job Duties: Responsible for formulating the financial plan for the U. S. market, to prepare and submit the financial statistics, statements and tax reports, to the relevant government and tax organization and to [provide] feedback to the parent company. In the absence or disability of the President, the Vice President

designated by the Board of Directors shall perform all the duties of the President.

[Named individual] Secretary/Bookkeeper...

Job Duties: Responsible for general office secretary work including filing, typing, appointment arrangement for executive. Keeps records of financial transactions using calculator and computer: verifies, allocates, and posts details of business transactions to subsidiary accounts in journals and computer files from sales slips, invoices, receipts, check stubs, and computer printouts; summarizes details and transfers data to general ledger; reconciles and balances accounts; calculates employee wages from plant records and prepare checks for payment of wages.

[Named individual] Purchasing Agent...

Job Duties: To coordinate activities involved with procuring goods and services, and advertising for establishment, review requisitions, confirm [sic] with vendors to obtain product or service information, such as price, availability and delivery, schedule; select products for purchase by testing, observing or examining items.

[Named individual] Sales Representative...

Job Duties: Sells variety of commodities in sales establishment. To demonstrate use of merchandise, examine effective [sic] article returned by customers to determine if refund or replacement should be made, estimate quality [sic] of merchandise required to fill customer needs.

[Named individual] Operation Assistant...

Job Duties: Assist vice president in contacting suppliers and manufacturers when vice president is out of town or not in the office and completes reports of price comparisons and marketing research for vice president, who places the purchase orders with the suppliers.

On appeal, counsel argues that the director ignored the regulatory definition of executive capacity and relied on the more general definitions of managerial capacity. Counsel also argues that the director erred in basing his decision on the fact that the petitioner employs only a few individuals in the import and export business.

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. Although the petitioner's descriptions are moderate in length, there is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as develops and establishes policies and objectives of the business; confers with company officials to plan business objectives, and operations between divisions and departments, etc. are without any context in which to reach a determination as to whether they would be qualifying. Other duties such as plans and develops industrial, labor, and public relations policies designed to improve company image and relations with customers, employees, and public 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.

Further, the petitioner's evidence is not sufficient in establishing that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing nonqualifying duties. While the petitioner states that the beneficiary plans, develops and establishes policies and objectives of the business; confers with company officials to plan business objectives, and operations between divisions and departments, the organizational chart presented reflects a single unit operation with straight line responsibilities and accountability from the beneficiary to non-supervisory employees, excepting the vice president of finance, who professes fiduciary responsibilities and periodically "filling in" for the beneficiary.

The fact that an individual manages a small business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. The record does not establish that a majority of the beneficiary's duties have been or will be primarily directing the management of the organization. In the absence of the listing of any specific task(s) performed by the beneficiary and her subordinates, it must be concluded that the beneficiary's duties have been and will be directly providing the services of the business. The petitioner has not demonstrated that it has reached or will reach a level of organizational complexity wherein the hiring/firing of personnel,

discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis. Nor does the record demonstrate that the beneficiary primarily manages an essential function of the organization or that she operates at a senior level within an organizational hierarchy. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the minimal documentation of the parent's and the petitioner's business operations as well as the absence of ownership documentation regarding the parent organization, raises the issue of whether there is a qualifying relationship between and U.S. entity and a foreign entity pursuant to 8 C.F.R. 214.2(l)(1)(ii)(G). As the appeal will be dismissed, these issues need not be examined further.

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.

ORDER: The appeal is dismissed.