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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

[redacted]

File: WAC-99-248-53104 Office: California Service Center Date: MAY 02 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: 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 primarily engaged in importing and exporting automobile parts. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its specialist of automobile parts and export. The director determined that the petitioner had not established that the beneficiary would be employed in a specialized knowledge capacity, or that she possessed specialized knowledge and denied the petition.

On appeal, counsel submits a brief in rebuttal to the director's findings.

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(l)(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 (l)(1)(ii)(G) of this section;
>
> (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(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 United States petitioner was established in 1997 and states that it is a wholly-owned subsidiary of Shanghai Youth Limousine Repair Corporation, located in Shanghai, China. The petitioner seeks to extend the employment of the beneficiary for a three-year period at an annual salary of $18,000.

At issue in this proceeding is whether the beneficiary will be employed in a specialized knowledge capacity, and whether she possesses specialized knowledge.

Title 8, Code of Federal Regulations, part 214.2(l)(1)(ii)(D) provides that:

> *Specialized knowledge* means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In her decision, the director noted that the petitioner had not demonstrated that the beneficiary was serving in a specialized knowledge capacity with respect to the petitioner's business, nor had the beneficiary been shown to possess an advanced level of knowledge of the processes and procedure's of the petitioner's parent company. Further, the director stated, in pertinent part that:

> The petitioner has not shown that the beneficiary's duties are so intricate that they can only be implemented efficiently by the beneficiary. The petitioner has not established that the beneficiary's knowledge is not mere general knowledge or expertise that enables her to provide a service. Accordingly, the petitioner has not established the beneficiary to be serving the petitioner in a capacity involving specialized knowledge.
>
> Additionally, the petitioner has provided insufficient evidence to demonstrate that the beneficiary's duties involve or require special or advanced knowledge. The record contains no comprehensive description of the beneficiary's duties indicating that these duties are so unique and out of the ordinary that their implementation requires specialized knowledge. The record is not persuasive that the beneficiary's familiarity with the company's operating standards, policies and unique recipes is so distinctive and uncommon that it can only be achieved by someone possessing an advanced level of knowledge of the processes and procedures of the petitioning organization.

On appeal, counsel states in part that:

> **Beneficiary is qualified for specialized knowledge pursuant to 8 C.F.R. 214.2(1)(1)(ii)(D)**
>
> In the case at issue, Beneficiary is appointed by the parent company and petitioner as a **Specialized Knowledge of Management** of purchase and export of automobile components and parts. In addition to her professional training in Management and Economics, she has MORE THAN EIGHT YEARS working experience in supervision and management of import and export of automobile components in the Parent company. When she was in the Parent company, she was a Manager of Parent company's Purchase Division of automobile parts for SEVEN years. She has specialized knowledge of the parent company's import and export policies, special conditions, procedures and regulations for automobile import to the parent company.
>
> The overseas Parent Company and Petitioner in the U S wrote supporting letters to verify that beneficiary's position requires specialized knowledge of Parent Company's policies and regulation, procedure of operational rules concerning importing U S automobile parts to China.
>
> It further qualifies Beneficiary's L1B [sic] status that she assumes the supervisory duties of the president when he is on business trips. Under such circumstances, Beneficiary is the only one who is in charge to carry out Parent Company's decisions.
>
> Beneficiary is qualified for the position offered. Both Petitioner and overseas parent company submit letter to verify that Beneficiary's position requires Specialized Knowledge and Beneficiary possesses requisite specialized knowledge of Management of parent company's purchase of automobile components and parts and export the products to China. Furthermore, if her L-1b [sic] status cannot be extended, Petitioner will suffer substantial business loss and there will be no one in charge of the business operations in the United States...

Information on the petition indicates that the beneficiary's duties in the U.S. entity are as follows:

> ...IV. **BENEFICIARY HAS BEEN AND WILL BE SPECIALIST OF AUTOMOBILE PARTS IMPORT AND EXPORT**
>
> Beneficiary has been transferred to the Petitioning company as a Specialist of Automobile Parts and Export

since 1998. Beneficiary will be in charge of the management and operation of automobile parts importing and exporting that the subsidiary conducts in the United States. Her duties include the following:

1. **Implement the Automobile Parts Import and Export Management Policies of the Organization**

As the corporate Specialist of Automobile Parts Import and Export, Beneficiary will implement Petitioner's import and export policies established by the President, including the quantities and type of automobile parts that Petitioner will purchase and export, expansion of the purchasing networks in the United States, and shipment of all purchase orders.

2. **Supervise and Train the Importing Personnel According to the Parent Company's Policies and General Manager's Instructions**

Beneficiary will be in charge of supervising and training purchasing personnel according to the policies established by the Parent Company in China.

The parent company has established sophisticated and systematic policies for import and export in the United States and in China, its purchase and distribution, and its quality control and utility instructions. Petitioner as a subsidiary is required to follow these policies in order to provide the best services to the U.S. market. It is therefore crucial for Petitioner to have a Specialist to supervise and train its purchase and sales personnel.

Although counsel argues that the beneficiary's current position of Specialist of Automobile Parts Import and Export requires an individual strongly versed and specializing in the parent company's import and export auto parts policies and procedures, nothing contained in the record of proceeding specifically identifies any of those policies or procedures. Therefore, it cannot be concluded that such duties, such as they may be, cannot be taught nor that they surpass the ordinary or usual knowledge or skills held by a person in the same field. The beneficiary's degree in economics and management notwithstanding, the record does not specifically indicate that any special training was received by the beneficiary. Although the record indicates that the beneficiary may possess knowledge of how to perform her job competently, it would seem reasonable that knowledge of the foreign entity's application of its policies and procedures to the U.S. marketplace, could be gained other than through extensive prior experience with the foreign entity.

Although counsel further argues that the facts and circumstances have not changed since the INS approved the initial L-1 petition for the beneficiary's transfer to the United States in 1998, copies of such documentation are not a part of the present record for review by this office. It is further noted that previously accorded L-1A status does not automatically qualify the beneficiary for the extensions of such status. Determinations of eligibility are based on the totality of evidence available to this Service at this time.

The record indicates that a very significant part of the beneficiary's duties were described as "training" other employees to understand and use the "polices and procedure's unique to the parent. However, according to an organizational chart (exhibit 15) contained in the record, the petitioner consists of the following employees, a general manager, a technical repair manager, an accounting manager and the beneficiary, who reports to the general manager and has no subordinate employees. Further, on appeal counsel states that if the petition is not approved, the petitioner "will suffer substantial business loss and there will be no one in charge of the business operations in the United States". It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

Upon review of the record, the petitioner has not sufficiently established that the beneficiary will be employed in a specialized knowledge capacity, or that she possesses specialized knowledge. For this reason, the petition may not be approved.

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.