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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.
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Washington, D.C. 20536



File: WAC-97-183-52709

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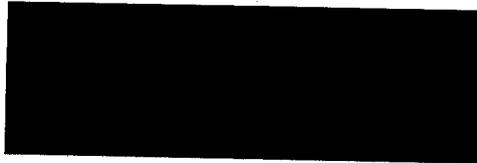
Date: MAY 07 2002

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

Megan L. Rosenz
for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner claims to be engaged in the production and sale of garments made of fur or leather. The petitioner also claims to have diversified into the restaurant business and is doing business as "Sichuan Wok" in Arlington, Virginia. Information contained in the record indicates that the beneficiary was granted L-1 classification from July 1, 1996 until June 30, 1997. The beneficiary's I-94 Departure Record indicates that the beneficiary was admitted to the United States as an L-1 intracompany transferee on February 11, 1997 until June 30, 1997. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as its manager and president for two years. The director determined that the evidence submitted with the petition had not established that the petitioning entity was a viable business operation, and therefore, was not doing business in the United States other than as an agent of the foreign entity. The director's decision was affirmed by the Associate Commissioner for Examinations on appeal.

The Associate Commissioner, beyond the decision of the director, found that the petitioner had not established that the beneficiary has been and will continue to be employed in the United States primarily in a managerial or executive capacity.

On motion, counsel states that the information submitted by the petitioner clearly demonstrates that it is doing business in the United States. Counsel also states that the beneficiary's job duties are clearly illustrative of executive duties.

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 regulations at 8 C.F.R. 214.2(l)(14)(ii) state 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.

At issue in this proceeding is whether the petitioning entity is doing business as required by the regulations.

The regulation at 8 C.F.R. 214.2(1)(1)(ii)(H) states:

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

On motion, counsel states that since the beneficiary was unable to pursue the fur trading business and the restaurant business simultaneously, she concentrated on the restaurant business. Counsel also states that the information submitted demonstrates it is doing business as a restaurant.

The petition extension was filed on June 24, 1997. The petition lists the petitioning entity's location as 464 18th Avenue, San Francisco, Ca.

In a sworn affidavit dated February 13, 1998, the beneficiary states in pertinent part:

In my capacity as a manager I made a decision to concentrate on the establishment of a food business located in Virginia rather than on the other aspects of the business relating to fur or leather garments. As a result, the evidence submitted primarily dealt with the operation of a food business. I obviously could not devote much time to the aspect of our business relating to fur and leather at the same time. There would be no lease from California because I had moved operations from there. There would be no shipper's export declaration

forms because no product was shipped. Therefore, there would be little evidence of operations in California because there were none.

A statement contained in the record indicates in pertinent part:

In 1997, the company did not fill any orders on its own behalf. There was nothing shipped during 1997....In addition, the lack of documents reflecting a California address is simply indicative of the fact that Zhengda's center of operation is now Virginia, not California. In fact, the petitioning entity does little, if any business out of California.

The statement also indicates that the principal activity of the petitioning entity, [REDACTED] for the year 1997 was doing business as "Sichuan Wok."

The petitioning entity, at the time of the filing date of the petition, was listed as [REDACTED] San Francisco, California not [REDACTED] at an address in Virginia. The 1997 income tax return indicates that Zhengda Development, Inc. was located at [REDACTED]

[REDACTED] The record also contains cancelled checks bearing the restaurant's name and showing the address as [REDACTED]

[REDACTED] The petitioning entity's checking account statement reads Zhengda Development, Inc. with the address as [REDACTED]

[REDACTED] The record as presently constituted does not contain an amended petition. 8 C.F.R. 214.2(1)(7)(C).

In conclusion, the evidence presented does not demonstrate the petitioning entity, Zhengda Development, Inc., located in San Francisco, California is "doing business" as defined by the regulation at the time the petition was filed. 8 C.F.R. 103.2(b)(12). Further, Sichuan Wok has not been established as a qualifying organization doing business as defined by regulation. For this reason, the petition may not be approved.

Another issue raised by the Associate Commissioner in his decision of June 9, 2000 concerned whether the beneficiary has been and will continue to be employed in the United States primarily in a managerial or executive capacity. Counsel states that the beneficiary's duties, in connection with the restaurant business are managing the organization, supervising and controlling the work of others, hiring and firing employees and contractors, and exercising discretion over day-to-day operations. Counsel also states that the petitioner's restaurant venture employed more than one person. Further, counsel states that the beneficiary's job duties are clearly illustrative of executive duties.

The statements or assertions that counsel made do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Consequently, the petitioner has not sufficiently established that the beneficiary has been and will continue to be employed in the United States primarily in a managerial or executive capacity. For this additional 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 Associate Commissioner's decision of June 9, 2000 will be affirmed. The petition is denied.