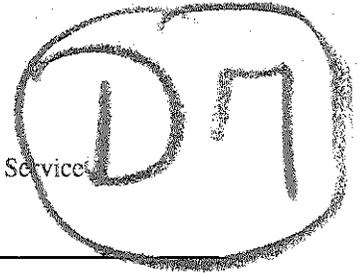




Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Justice
Immigration and Naturalization Service



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



File: WAC 01 014 53406

Office: CALIFORNIA SERVICE CENTER

Date: JAN 17 2003

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition remanded for further consideration.

The petitioner is an import/export company that specializes in the distribution of Chinese craft products. It seeks to employ the beneficiary in the United States as its director and executive vice president to start a new business. The director determined the petitioner had failed to establish that it had acquired sufficient physical premises suitable to house a commercial enterprise.

The petitioner appears to be represented by a new attorney. However, the record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative signed by the petitioner. All representations will be considered, but the decision will be furnished only to the petitioner.

On appeal, counsel states that the director ignored the fact that the petitioner has already secured premises at Unit 102, 624 South Lander Street, Seattle, Washington since September, 2000. Counsel further states that an advanced rental payment and \$1,000 damage deposit were paid to the landlord, Evergreen Marketing, Inc. Counsel forwards a copy of a lease agreement and an e-mail message dated March 6, 2001 acknowledging receipt of six months rent secured by a payment of \$3,500 by the landlord. Counsel submits other documentation to establish that the Chinese parent company owns more than four buildings and employs more than 1,800 employees abroad. Counsel requests that the visa petition be approved.

8 C.F.R. 214.2(l)(3)(v) sets forth the requirements for an organization setting up a new office in the United States. 8 C.F.R. 214.2(l)(3)(v) states, in part, that the petitioner shall submit evidence that sufficient physical premises to house the new office have been secured.

The petitioner's lease for physical premises to house the new company was signed and entered into on September 10, 2000, prior to December 1, 2000, the filing date of the visa petition. It is determined that the petitioner had acquired sufficient physical premises suitable to house a commercial enterprise. Consequently, the petitioner has overcome the director's objection. However, the petition may not be approved as the record fails to demonstrate that the beneficiary meets the eligibility requirements for classification as an L-1 intracompany transferee.

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

Inasmuch as it appears that the beneficiary's eligibility for L-1 classification was not considered, this case will be remanded for the director to again review the record for a determination as whether the petitioner has met the eligibility requirements under section 101(a)(15)(L) of the Act to classify the beneficiary as an L-1 intracompany transferee. For example, whether there is an existing qualifying relationship between the U.S. and foreign entities, whether the beneficiary has been or will be employed in a primarily managerial or executive capacity, and whether the U.S. entity can support a managerial or executive position. The director may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision of April 18, 2001 is withdrawn. The petition is remanded to the director for further consideration in accordance with the foregoing and entry of a new decision.