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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: LIN-00-237-52790 Office: Nebraska Service Center Date: ~~APR 22 2003~~ APR 25 2003

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)

ON BEHALF OF PETITIONER:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Myra L. Rosenberg
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 appeal will be dismissed.

The petitioner, a paper company specializing in tele-medicine and medical insurance forms, 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 it is doing business or that the beneficiary has been or will be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel argues that the Service failed to consider all the evidence that the petitioner is conducting business and that the beneficiary has been and will be employed in a primarily 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 and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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 U.S. petitioner states that it was established in 1998 and that it is a subsidiary of [redacted], located in Snanghai, China. The petitioner declares two employees and a nine-month income for the period ending April 2000 of $32,000. It seeks to extend the petition's validity and the beneficiary's stay for two years at an annual salary of $31,600.

The first issue in this proceeding is whether the U.S. entity is doing business.

Regulations at 8 C.F.R. 214.2(l)(1)(ii)(G) state:

> *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
>
> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
>
> (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Regualtions at 8 C.F.R. 214.2(l)(1)(ii)(H) state:

> *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.

In response to a request from the Service for evidence that it is doing business, the petitioner, through counsel, stated, in pertinent part, that:

> [redacted] through counsel, respectfully submits that the requested documents are either irrelevant, duplicative, burdensome, and or unreasonable. As such, we object to your request for those documents that fall under each one of these categories. Without waiving such objections, we are submitting the following

documents individually tabbed for your convenience and indexed:

- Memorandum of Understanding for Collaboration [redacted] Inc. and [redacted] 1

- Letter of Intent [redacted] Inc., [redacted] and [redacted] 2

- Letter from mayor [redacted] of San Francisco, CA 3

- Advertisement in Shanghai Daily on Tele-medicine 4

- Tele-medicine, Health Informatics, and Medical Insurance Network Proposal 5

- Tele-diagnosis Project 6

- Business Account Statements (10/99-9/00) 7

- Sample letters from suppliers 8
Environmental Conservation Products
Sappi Fine Paper Specialty Release Products
1-Choloroanthraquinone Products
Hand-Drawn Glass Utensils

- Reseller Agreement Between [redacted] and American Business Systems Company 9

- Certificate of Title for Automobile owned by [redacted] 10

- Office Furniture Invoices 11

- Computer and Other Office Equipment Invoices 12

- Invitation letter for the Chines Delegation from Shanghai Jinshan Industrial Investment & Development Co, Ltd. & Shanghai, medical University 13

- Letter of Intent from Kaiser Foundation Research Institute Shanghai, Crosscape, LLC 14

- Employer's Quarterly Federal Tax return 15

- Commercial Invoices of Hand-painted Household Glass Products 16

- Invoices from Mitsui and Co., Ltd./Agreement of Sale 17

- Commercial Invoice from DAEWOO Corporation/Agreement of sale 18

- Commercial Invoice from Daehan Pulp Co., Ltd./Agrement of Sale 19

- Transfer of Documentary Credit (Citic Industrial bank of China) 20

- List of Major Clients [redacted] 21

- Financial Statements [redacted] 22

- Air Waybill/Arrival Notice-Invoice/Air Cargo Manifest/Bills of Lading, Letter of Release from Suppliers 23

In describing the proposed business undertaking of the petitioner, counsel stated, in pertinent part, that:

> One of [redacted] top projects is a venture agreement with Kaiser Permanente and Crosscape, LLC to collaborate in pursuing the contract opportunity of the Tele diagnosis Project for Shanghai University of Traditional Chinese Medicine (SUTCM). The Project aims to develop state-of-the-art telediagnosis capability for two facilities of SUTCM in Shanghai with planned expansion to the other five affiliated hospitals of SUTCM and the joint TCM department of two Beijing hospitals. The scope of the project includes, but is not limited to:
>
> a) overall project management and coordination
>
> b) creation of telecommunication network to capture, process, transmit, manage, and display patient data
>
> c) selection/procurement/ enhancement/development/ of biomedical equipment, telediagnostic applications, and other related devices
>
> d) creation of clinical, financial, and management information system
>
> e) creation of customized system integration, software development, and installation
>
> f) testing and training

> [The beneficiary] has had a key role in the expansion plans, and his continuing presence is essential to bring the expansion effort to a successful conclusion. It is anticipated that the expansion plans will, be completed **August 2002** (emphasis added).

The petitioner submitted a Form 1120 U.S. Corporation Income Tax return showing gross sales of $49,590. Additionally, according to schedule K of the Corporation Income Tax Return, the U.S. entity is not a subsidiary in an affiliated group or a parent-subsidiary controlled group, and no individual, partnership, corporation, estate or trust owns, directly, or indirectly, 50% or more of the corporation's voting stock.

On appeal, counsel states that the Service failed to consider the evidence, prior to the rendering of the decision. Counsel states that he is submitting documentary evidence not previously available. Counsel submits a 1999 Form 1120 U.S. Corporation Income Tax Return indicating that the petitioner had a total income of $49,349. The evidence of record indicates that the petitioenr is doing business. Therefore, the petitioner has overcome this portion of the director's objections.

The other issue in this proceeding is whether the beneficiary has been or 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.

The petitioner describes the beneficiary's duties as follows:

[The beneficiary] functions at a senior level within the subsidiary. He directs and manages the corporation's overall business operation with an eye towards its maximum efficiency, economy of operations and maximization of profits. He exercises full discretionary authority on corporate policies and daily operations of the business. He develops corporate policies for business operations to achieve [redacted] developmental goals. If necessary, he revises long and short-term company strategies upon review of corporate activity reports, financial statements, and economic forecasts to comply with changing economic situations. Likewise, [the beneficiary] plans and directs marketing and promotional activities to develop new markets nationwide using the internet, sales aids, advertising in commercial journals, promotional programs, trade

> shows, and personal networking. He confers with customers and representatives of associated industries to evaluate, promote, expand existing sales,and review the operations of competitors. Furthermore, he manages the investigation to determine the credit worthiness of prospective buyers, negotiates, and executes sales contracts with buyers. Finally, [the beneficiary] is authorized to hire professional personnel and/or independent contractors. Personnel training, supervision, promotion, compensation, and termination are delegated to [the beneficiary].

In response to a Service request for additional evidence, in a letter dated December 1, 2000, counsel merely restates the aforementioned duties attributed to the beneficiary.

On appeal, counsel submits a brief, which states, in pertinent part, that:

> The beneficiary does not supervise or control the work of other supervisory, professional or managerial employees while working at [redacted] Instead, he manages a function or component within [redacted] within the meaning of the statute. In other words, he serves as a functional manager. The function manager, a person who manages a function or component but does not have qualifying staff responsibilities, must manage an "essential function". The term "essential function" is not defined in the statute or regulations.
>
> In this case, [the beneficiary], vested with all the full power by the Chinese parent company [redacted] has full discretionary authority and control of the overall business operations of [redacted] he sets financial and development goals and develop[s] corporate policies and strategies for company operations to meet such goals. In addition, he manages the sales and marketing of paper raw materials and revises corporate strategies upon review of company activity reports, financial statements and economic forecasts. Likewise, he negotiates requirement contracts with major paper manufacturing firms in the United States. In addition, the beneficiary, [named individual] confers with customers and representatives of associated industries to evaluate, promote, and expand existing merchandise, and reviews the operations of competing businesses. In sum, the above-mentioned duties of the beneficiary are "indispensable or important to achieve [redacted] goals" as provided in the statute. [The beneficiary's] services

are deemed essential to provide a senior level of guidance and direction in regard to the success of C-Way.

[The beneficiary] functions autonomously and head[s] the U.S. operations as its President and Chief Executive Officer. Within [redacted] there is no other officer superior than [sic] [the beneficiary's] position. He is accountable to only the Chinese parent company., [redacted], and reports directly to the same. Like the staff-managing manager, the function manager must have discretion over the day-to-day operations of the function. [The beneficiary] has discretion over the day-to-day operations of the function.

[The beneficiary], acting as President and Chief Executive, manages [redacted] overall business operation with an eye towards [redacted] optimum efficiency, economy of operations and maximization of profits. Not only that [sic] [the beneficiary] sets corporate policies and business goals to secure [redacted] future and growth, he exercises wide latitude in discretionary decision-making. [The duties as described supra, of the beneficiary entail significant decision-making in determining whether a particular corporate client is suitable for [redacted] to engage in long or short term requirements contract in terms of its commercial goodwill in the industry , credit worthiness, and solvency.] [sic] All other terms and impacts of the relationship such as price, delivery, warranty, and duration of contract require careful and significant decision-making on the part of [the beneficiary]. He is also a significant decision-maker regarding what corporate policies and marketing strategies to implement in light of the ever-changing market trends, revenue production and local/global competition. He receives only general supervision or direction from the board of directors and managers of the Chinese parent company.

Even assuming that [the beneficiary's] duties were not considered executive in nature, these "semi-executive" duties combined with his clear managerial duties more than sufficiently establish that [the beneficiary] engages in a managerial capacity within C-Way International, Inc.

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described

as having full discretionary authority and control of the overall business operations, setting financial and development goals, developing corporate policies and strategies for company operations to meet goals, managing the sales and marketing of paper raw materials, revising corporate strategies, financial statements and economic forecasts, and negotiating contracts with major paper manufacturing firms, are without any context in which to reach a determination as to whether they would be qualifying. The use of the position title of "president" is not persuasive.

The record does not reflect that the beneficiary will function at a senior level within an organizational hierarchy other than in position title. There is no comprehensive description of the beneficiary's duties that persuasively demonstrates that the beneficiary has been and will be performing in a primarily managerial or executive capacity. The description of the beneficiary's duties provided by counsel is vague and provides no sense of the beneficiary's daily activities. There is no evidence to establish that the petitioner employs a subordinate staff of professional, managerial, or supervisory personnel who relieve the beneficiary from performing nonqualifying duties.

On appeal, counsel states that the beneficiary is managing a function rather than managing and directing the activities of a subordinate staff of professional and supervisory personnel. However, when managing or directing a function, the petitioner is required to establish that the function is essential and the manager is in a high-level position within the organization hierarchy, or with respect to the function. The record must demonstrate that the beneficiary has been and will be primarily managing or directing, rather than performing, the function. The evidence provided is not convincing in establishing that the beneficiary has not been and will not be primarily involved in performing the day-to-day operations of the petitioning organization.

Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed in a primarily managerial or executive capacity. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the initial petition indicates that the petitioner is a wholly-owned subsidiary of [redacted] However, the 1998 and 1999 U.S. Corporation Income Taxes submitted by the petitioner indicate that the petitioner is not a subsidiary in an affiliated group or a parent-subsidiary controlled group, and no individual, partnership, corporation, estate or trust owns, directly, or indirectly, 50% or more of the corporation's voting stock. Therefore, it appears that there is no qualifying relationship between the United States and the foreign entities pursuant to 8 C.F.R. 214.2(l)(1)(ii)(G).

In visa petition proceedings, the burden of proving eligibility for the benefit sought 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.