

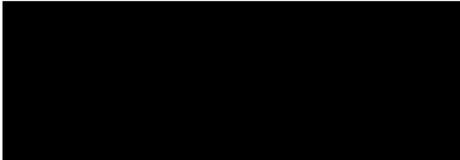


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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC 00 082 53492 Office: CALIFORNIA SERVICE CENTER Date: 02 NOV 2001

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

Public Copy 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 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

Robert P. Weimann, Acting Director  
Administrative Appeals Office

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

The petitioner is the United States publisher of Stop! Magazine. The petitioner seeks to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge, as its administrative manager.<sup>1</sup> The director denied the petition after determining that the petitioner had failed to establish a qualifying relationship between the petitioner and the beneficiary's foreign employer.

On appeal, the petitioner provides additional documents in an effort to establish its ownership and the ownership of the foreign entity.

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(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.

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<sup>1</sup> Although the petitioner filed the petition seeking classification of the beneficiary as an L-1B individual with specialized knowledge, the petitioner specifically indicates that the job title of the proposed position is "administrative manager." The petitioner does not explain how the beneficiary qualifies as a specialized knowledge manager or the reason for not seeking classification as an L-1A manager or executive.

The issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the petitioner and the overseas company.

8 C.F.R. 214.2(l)(1)(ii)(G) states:

*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.

8 C.F.R. 214.2(l)(1)(ii)(I) states:

*Parent* means a firm, corporation, or other legal entity which has subsidiaries.

8 C.F.R. 214.2(l)(1)(ii)(J) states:

*Branch* means an operation division or office of the same organization housed in a different location.

8 C.F.R. 214.2(l)(1)(ii)(K) states:

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

8 C.F.R. 214.2(l)(1)(ii)(L) states, in pertinent part:

*Affiliate* means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by

the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

According to the evidence submitted, the petitioner is a corporation incorporated in California in May of 1999. The petitioner's Articles of Incorporation show that it was authorized to issue 10,000 shares. The petitioner also provided a letter dated June 2, 1999 that references stock certificate no. 1 for 7,500 shares issued to Nicola Willis and stock certificate no. 2 for 2,500 shares issued to Scott Thompson. There is no other evidence in the record that demonstrates ownership and control of the petitioner. The petitioner claims to be affiliated with STOP! Magazine, Ltd., a company incorporated in the United Kingdom. There is no evidence of the ownership and control of the company incorporated in the United Kingdom.

On February 29, 2000, the director requested evidence of ownership and control of the foreign entity, and also the stock transfer ledger and stock certificates of the United States entity. The petitioner responded to the director's request by submitting a certificate of incorporation of STOP MAGAZINE LTD, and a profit and loss statement of the foreign entity. The petitioner also submitted a Notice of Transaction 25102(f) filed with the Commissioner of Corporations in California. This document indicated that the petitioner had sold common securities for the amount of 2000 dollars. Also submitted was a statement of officers and directors and agent for service of process that had been filed with the California Secretary of State.

Based on the submitted evidence the director determined that the petitioner had failed to demonstrate that the petitioner had established a qualifying relationship between itself and the foreign entity.

On appeal, the petitioner submitted a copy of the Articles of Incorporation of the foreign entity. The Articles of Incorporation named two directors for the foreign company. The petitioner re-submitted its Articles of Incorporation and the letter referencing the issuance of 10,000 shares.

On review, the record as presently constituted is not persuasive in demonstrating that a qualifying relationship exists between the petitioner and the foreign entity. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this nonimmigrant visa classification. Matter of Siemens Medical Systems, Inc., 19 I&N Dec. 362 (BIA 1986); see also Matter of Hughes, 18 I&N Dec. 289 (Comm. 1982); Matter of Church of Scientology International, 19 I&N Dec. 593 (BIA 1988) (in immigrant proceedings). The petitioner has not established the ownership and control of the foreign entity. Accordingly, the

Service is unable to determine whether a qualifying relationship exists for purposes of this petition.

Beyond the decision of the director, the record is not persuasive in showing that the intended beneficiary would be employed in a specialized knowledge capacity or in a capacity that is primarily managerial or executive. In addition, there is no evidence of any physical premises to house the new office. As the appeal will be dismissed, these issues need not be examined further.

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.