

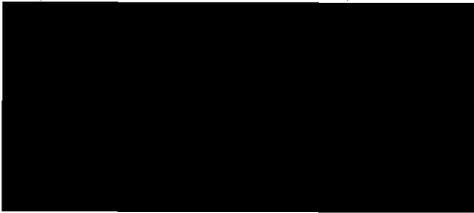


U.S. Department of Justice

Immigration and Naturalization Service

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



**PUBLIC COPY**

File: LIN 00 073 52402

Office: Nebraska Service Center

Date:

FEB 12 2001

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:



identification 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. Wiemann, Acting 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, an import/export company, seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had submitted insufficient evidence to establish that there is a qualifying relationship between the U.S. and foreign entities.

On appeal, counsel argues that there is sufficient evidence within the record to establish that there is a qualifying relationship between the U.S. and foreign entities. Counsel submits additional evidence in support of the appeal.

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. company, [REDACTED], was established in 1998 and states that it is a wholly-owned subsidiary of the petitioner, [REDACTED] located in South Africa. The U.S. company declares two employees and a gross annual income of approximately \$62,684. The petitioner seeks to extend the petition's validity and the beneficiary's stay for three years at an annual salary of \$40,000.

At issue in this proceeding is whether the petitioner has submitted sufficient evidence to establish that there is a qualifying relationship between the U.S. and foreign entities.

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

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

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

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

8 C.F.R. 214.2(1)(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.

The U.S. company, El Paso Leather, Inc., claims to be a wholly-owned subsidiary of the foreign entity, Westpine Armature Winders & Engineering. In a letter dated March 2, 2000, the petitioner was requested to submit the following:

A) Evidence that the United States firm and the foreign firm continue to be qualifying corporate organizations. Common ownership and/or control between the United States business entity and the foreign business entity must have been maintained.

The petitioner submitted a letter signed by its personnel manager stating that the foreign entity "continues to own 100% of the registered share capital of [REDACTED]." A 1999 U.S. Corporation Income Tax Return contains conflicting information regarding the ownership of the U.S. entity. According to schedule K of the tax return, the foreign entity owns 100 per cent of the U.S. entity's stock; however, according to schedule E, the beneficiary, [REDACTED] owns 100 per cent of the U.S. entity's stock. This conflicting information has not been resolved. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, 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 (Comm. 1988).

On appeal, counsel resubmits the U.S. entity's 1999 U.S. Corporation Income Tax Return and claims that the foreign entity owns 1,000 shares of the U.S. entity's stock. Counsel also submits a bank statement showing that [REDACTED] transferred 1,000 dollars to an unnamed account at TCF

National Bank in Wheaton , Illinois, on June 10, 1998. There is no indication that this is the U.S. entity's account.

Regulations 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 petition. Matter of Siemens Medical Systems, Inc., 19 I&N Dec. 362 (BIA 1986); Matter of Hughes, 18 I&N Dec. 289 (Comm. 1982); see also Matter of Church of Scientology International, 19 I&N Dec. 593 (BIA 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. Id.

The petitioner has submitted personal statements claiming that it owns 100 per cent of the U.S. entity's stock. However, there is no independent evidence demonstrating the ownership of the U.S. entity. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner was requested to submit evidence that the U.S. and foreign entities are qualifying organizations. Evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include share certificates, stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest. There is no such evidence within the record. The petitioner has submitted insufficient evidence to establish the ownership of the U.S. entity. Accordingly, it cannot be determined whether there is a qualifying relationship between the U.S. and foreign entities. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has submitted insufficient evidence to demonstrate that the beneficiary's employment in the United States will be temporary. Matter of Isovic, 18 I&N Dec. 361 (Comm. 1980); 8 C.F.R. 214.2(1)(3)(vii). Further, the petitioner has submitted insufficient evidence to establish that the beneficiary has been or will be employed in a primarily managerial or executive capacity, or that the U.S. and foreign entities are doing business. As the appeal will be dismissed on the grounds discussed, 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.