



U.S. Department of Justice

Immigration and Naturalization Service

D1

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



Public Room

File: SRC 00 101 51640

Office: Texas Service Center

Date: JAN 8 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: SELF-REPRESENTED

Identifying information to prevent clearly substantiated 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

Mary C. Mulrean, Acting Director
Administrative Appeals Office

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

The petitioner is engaged in transportation. It seeks to employ the beneficiary temporarily in the United States as its marketing manager. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. and foreign entities.

On appeal, the petitioner submits a brief and additional documentation in rebuttal to the director's findings.

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 United States petitioner was established in 1994 and states that it is an affiliate of [REDACTED], located in Colombia. The petitioner seeks to employ the beneficiary for one year at an undetermined salary.

At issue is whether a qualifying relationship exists between the U.S. and foreign entities.

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(1)(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.

In his decision, the director noted that the petitioner was requested to provide evidence of ownership of both the United States company and the foreign company. The director further noted that:

The response received to that request a letter from [REDACTED] [REDACTED] stating the beneficiary has worked for an unnamed company "since 9 years ago." Also included was a copy of the incorporation papers of [REDACTED] Transport Inc. No evidence was submitted showing the ownership of any foreign companies.

On appeal, the petitioner states that "[REDACTED] and [REDACTED] Transport Inc. are not affiliated doing business, this Corporations have different owners, but they know each other in business."

The evidence provided does not demonstrate that a qualifying relationship exists between the petitioning entity and a foreign organization. For this reason, the petition may not be approved.

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the beneficiary has been employed abroad or will be employed in the proposed position in the United States in a primarily managerial or executive capacity. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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 appeal is dismissed.