



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

[REDACTED]

File: LIN 99 115 50530 Office: Nebraska Service Center Date: **JAN 8 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)

Public Copy

IN BEHALF OF PETITIONER:

[REDACTED]

Identifying user 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

Mary C. Mulrean, 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 is an installer of acoustical systems. It seeks authorization to employ the beneficiary temporarily in the United States as treasurer of its new office. The director determined that the petitioner had not demonstrated that there is a qualifying relationship between the U.S. and foreign entities, or that the beneficiary had at least one year of full-time employment with a qualifying entity within the three-year period preceding the filing of the petition.

On appeal, counsel submits a brief 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(1)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

A) Sufficient physical premises to house the new office have been secured;

B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The U.S. petitioner states that it was established in 1998 and that it is a wholly-owned subsidiary of [REDACTED], located in Sarnia, Ontario. It seeks authorization to employ the beneficiary for one year at an annual salary of \$40,000.

The first 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(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 (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(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 operating 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.

The record contains stock certificate number 1 which indicates that [REDACTED] owns 51% of the non-assumable shares of [REDACTED], Inc., however, the record does not demonstrate that there is a qualifying relationship between the U.S. petitioning entity and the beneficiary's foreign employer, [REDACTED], Inc.

On appeal, counsel fails to address this portion of the director's concerns. Consequently, the petitioner has not demonstrated that a qualifying relationship exists between the U.S. entity and the beneficiary's foreign employer. For this reason, the petition may not be approved.

The other issue in this proceeding is whether the beneficiary has had at least one year of full-time employment abroad with a qualifying entity within the three-year period preceding the filing of this petition.

8 C.F.R. 214.2(l)(3)(iii) states that an individual petition filed on Form I-129 shall be accompanied by evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

The petitioner described the beneficiary's duties as follows:

[REDACTED] desires to transfer [REDACTED] to [REDACTED] to fill the position of Corporate Treasurer. He will be in charge of helping to establish the new office in Michigan. Mr. [REDACTED] will be responsible for both administrative and technical duties, which include:

- * Review job costs and expenses;

- * Executing contractual matters for the corporation;
- * Provide knowledge of different types of business procedures;
- * Acting as a liaison with the parent company, regulators, clients and the public;
- * Inspection of job performance;
- * Overseeing the daily activities for the effective operation of the firm;
- * Providing technical quality control;
- * Estimate large scale jobs and prepare bids; and
- * Consulting on effectiveness and efficiency of job sites.

In her decision, the director noted some discrepancies in the record and requested clarification. The director requested information on the following issues:

1. The letter dated June 30, 1998 signed by [REDACTED] indicating that the beneficiary, [REDACTED] Sr. has served as president of [REDACTED] since its inception. Is [REDACTED] still the president of [REDACTED]
2. A statement submitted as Certificate of Support signed by [REDACTED] indicating he is the president of [REDACTED]. Please clarify the dates [REDACTED] became president [REDACTED]
3. A statement submitted by the president of [REDACTED] Inc. indicating the amount of shares invested in [REDACTED] & [REDACTED] is signed by [REDACTED] it appears that [REDACTED] is the president of [REDACTED] Inc. Is this correct? If so, please give the date he started and whether he is presently presiding over this company.

In response, counsel for the petitioner stated that [REDACTED] Sr. served as the president of [REDACTED], the foreign entity, from its inception until February 15, 1996, when he then became the Chairman of [REDACTED].

On appeal, counsel argues that the director's decision to deny the petition because the record did not contain a description of the beneficiary's duties as chairman of the foreign entity and

therefore had not established that he (the beneficiary) had the requisite one year of managerial experience with the parent company for twelve consecutive months during the prior thirty-six months is incorrect. Counsel states that:

Exhibit 2 clearly indicates that the Beneficiary's title with [REDACTED] changed from what we listed in his visa petition, but his duties remained the same as listed in his visa petition (See Exhibit 3 for a copy of his visa petition.) More specifically, the Beneficiary's visa petition read as follows:

[REDACTED] is amply qualified for the Manager position. He has served in a managerial position for at least one consecutive year during the past three years. Specifically, [REDACTED] has served as a manager at CAL since its inception over twenty years ago. In said capacity, he was responsible for the overall management of the company. [REDACTED] has over thirty-three year (sic) experience in the acoustical industry. The above-listed credentials qualify [REDACTED] for the position being offered.

The record documents the beneficiary's employment as the president of [REDACTED] Inc. since May 10, 1993. On appeal, the petitioner claims that [REDACTED] owns and controls the U.S. entity, [REDACTED] Inc., however, there is no evidence in the record that establishes a qualifying relationship between [REDACTED] Inc., the beneficiary's foreign employer, and the petitioning organization. Accordingly, the record does not demonstrate that the beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. For this additional reason, the petition may not be approved.

On appeal, counsel states that the beneficiary requests "that the INS grant him L-1B status if it were to deny his L-1A request." However, in order to change the beneficiary's classification, a new petition must be filed.

Beyond the director's decision, the petitioner has submitted insufficient evidence to establish that the beneficiary has been or will be employed in a primarily managerial or executive capacity. As the appeal 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.