



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



JAN 29 2001

File: WAC 97 170 51326 Office: California Service Center Date:

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:



PUBLIC COPY

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.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is an investment and trading company. It seeks to employ the beneficiary temporarily in the United States as its vice president. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. and foreign entities.

On appeal, counsel argued that there is a qualifying relationship between the U.S. and foreign entities.

The Associate Commissioner dismissed the appeal reasoning that the evidence submitted by the petitioner had not shown that there is a qualifying relationship between the U.S. and foreign entities.

On motion, counsel argues that the petitioner has now submitted a corrected stock certificate to establish that there is a qualifying relationship between the U.S. and foreign entities.

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.

At issue in this proceeding is whether there is a qualifying relationship between the U.S. and foreign entities. The U.S. petitioner, Lida Group USA, Inc., claims that it is a subsidiary of Jinzhou Lida Industries group Company, located in Jinzhou, China.

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(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 Associate Commissioner noted that the share certificate submitted with the petition indicated that "although the petitioner was authorized to issue only 1,000 shares of common stock, 30,000 were owned by [REDACTED] Industries Group as of April 15, 1996."

On motion, counsel states that the petitioner, upon receiving the decision, noted the discrepancy, retained new counsel, and prepared a new and correct copy of stock certificate which properly reflected the fact that the petitioner has 1,000,000 shares available for issue, not 1,000.

It is noted that the record contains the corrected share certificate number 1. Nevertheless, the petitioner has not overcome the Associate Commissioner's concerns regarding whether the parent company had in fact paid for the ownership of the U.S. entity.

The Associate Commissioner noted that:

The petitioner was requested to submit evidence that the parent company had in fact paid for the ownership of the U.S. entity. The petitioner submitted evidence that it had received \$10,000 into its bank account on July 10, 1996, and \$25,051.62 on November 7, 1996. Neither of these deposits account for the sale of 30,000 shares of stock on April 15, 1996. These transfers would not even account for the sale of 30,000 shares on July 15, 1996, as the petitioner's bank account had a total of only \$20,004.65 on July 12. The amount of money in the account went to \$1,004.65 on July 18. The petitioner did not receive \$30,000 in the interim.

On motion, counsel argues that, "[a]s the new Stock Certificate Number 1 does indeed confirm that the Petitioner had 1,000,000 shares of authorized stock available, the rest of the supporting documentation submitted with the original appeal is again submitted in support of the clear parent-subsidiary relationship present in this case between the Chinese company, [REDACTED] Industries Group, and the U.S. subsidiary, [REDACTED]."

In a non-immigrant petition for an intracompany transferee, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See Matter of Siemens Medical Systems, Inc., supra. Without full disclosure of all relevant documents, the Service is unable to determine the elements of ownership and control.

Furthermore, a certificate of stock is merely written evidence that a named person is owner of a designated number of shares of stock in a corporation. Black's Law Dictionary (Fifth Edition, West Publishing Company, 1979). The regulation at 8 C.F.R. 204.5(j)(3)(ii) specifically allows the director to request additional evidence in appropriate cases. As ownership is a

critical element of this visa classification, the Service may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. 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 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.

Upon review, the petitioner has not established that the foreign parent company has purchased an ownership interest in the petitioning company. Therefore, 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 granted.

In visapetition 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 previous decision of the Associate Commissioner dated July 14, 1999, is affirmed.