

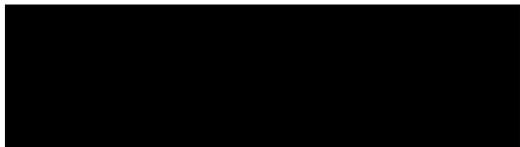


U.S. Department of Justice

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**

15 NOV 2001

File: WAC 00 127 52730 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:

SELF-REPRESENTED

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, 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 described as an investment business engaged in marketing and managing activities, purchase and sale of goods, and other business projects. The petitioner seeks to employ the beneficiary in the United States as its general manager. The director determined that the petitioner had not established a qualifying relationship with the foreign entity and had failed to demonstrate that the beneficiary has been functioning and will continue to function in a primarily managerial or executive capacity for the foreign entity.

On appeal, the petitioner disagrees with the director's determination and submits further evidence for consideration.

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.

The United States petitioner is a general partnership authorized to do business in Huntington Beach, California. The partnership was created October 1, 1999. The petitioner is requesting new employment for the beneficiary to start up the United States business.

The first issue in this proceeding is whether the petitioner and the foreign entity are qualifying organizations.

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 operation 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(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 this case the petitioner submitted a partnership agreement signed October 1, 1999 identifying the beneficiary and her husband as partners in the United States business Auction House. The partnership agreement indicated that the beneficiary owned 49 percent of the properties and intangible assets of the business and that her husband owned 51 percent of the properties and intangible assets of the business. The petitioner submitted a business license issued by the City of Huntington Beach, California for the partnership's Auction House business. The petitioner also submitted information about the foreign entity including a Letter of Foundation establishing the foreign company in August of 1996 in Czechoslovakia and a document apparently from the Czechoslovakia tax office confirming that the foreign entity had not interrupted its activities. The tax office document is dated July 15, 1999 and also identified the beneficiary's husband as the only partner and owner of the foreign entity.

The director requested additional evidence to establish the ownership and control of the petitioner and the foreign entity. The director specifically requested a list of owners for the foreign entity. The director also requested a detailed description of the beneficiary's job duties in the United States as well as a business plan for the United States entity.

In response, the petitioner submitted identification documents for the beneficiary, including a California driver's license and a portion of a passport. The petitioner also referenced other documents previously submitted including a business plan and photographs of the foreign entity's place of business.

The director determined that the petitioner had not established that it qualified as a joint venture or as an affiliate with the foreign entity.

On appeal, the petitioner submitted minutes of a meeting held March 15, 2000 wherein an agreement was made for the sale and transfer of a share of the foreign entity to the beneficiary. According to the minutes, 49 percent of the foreign entity was to be transferred to the beneficiary. The petitioner asserted that it had established a qualifying relationship with the foreign entity.

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 the United States and a foreign entity 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 provided adequate

documentation establishing the ownership and control of the foreign entity. The letter of foundation for the foreign entity indicates that the beneficiary's husband is the sole owner. The foreign entity's minutes dated March 15, 2000 indicating a transfer of part of the owner's interest is not sufficient to establish a transfer of stock actually took place. In addition, where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition is adjudicated, evidence submitted on appeal will not be considered for any purpose, and the appeal will be adjudicated based on the record of proceedings before the director. Matter of Soriano, 19 I&N Dec. 764 (BIA 1988). On May 11, 2000 the director specifically requested a list of owners of the foreign entity. The minutes of the meeting of the foreign entity wherein the claimed transfer of stock took place are dated March 15, 2000. If the ownership of the foreign entity was actually changed on March 15, 2000, that information should have been forthcoming in the response to the director's specific request for evidence. The ownership of the foreign entity has not been established.

In addition, based on the business license and the accompanying fictitious name certificate, it is evident that the petitioner is doing business as a partnership. 8 C.F.R. 214.2(l)(1)(ii) requires that the beneficiary of an L-1A petition seek to enter the United States temporarily. To evidence the temporary nature of the beneficiary's services, 8 C.F.R. 214.2(l)(3)(vii) requires that:

If the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and evidence that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States.

The beneficiary in this case is a partner in the business. The petitioner has not offered evidence that the beneficiary's services will be used for a temporary period as required by the regulation. Furthermore, it is questionable whether the partnership in this case can qualify as a legal entity for purposes of filing a nonimmigrant intracompany transferee petition for a partner or owner. For nonimmigrant purposes, a corporation is a separate legal entity from its stockholders and able to file a petition and employ them. Matter of Tessel, 17 I&N Dec. 631 (Comm. 1981). However, neither a sole proprietorship nor a partnership is a legal entity apart from its owner or owners. Matter of United Investment Group, 19 I&N Dec. 248 (Comm. 1984). Accordingly, it appears that in this case the partnership that filed the petition is self-petitioning because there is no separate legal entity that can employ the beneficiary.

The second issue in this proceeding is whether the petitioner has established that the beneficiary has been employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

i. manages the organization, or a department, subdivision, function, or component of the organization;

ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

i. directs the management of the organization or a major component or function of the organization;

ii. establishes the goals and policies of the organization, component, or function;

iii. exercises wide latitude in discretionary decision-making; and

iii. receives only general supervision or

direction from higher level executives, the board of directors, or stockholders of the organization.

In the petition, the petitioner described the beneficiary's job duties as creating a business strategy, management work, supervising and control. The director requested a more definitive description of the beneficiary's job duties for the foreign entity. The petitioner added that the beneficiary worked as an English translator, as a financial advisor and organization manager for the foreign entity. The director determined that the beneficiary's duties as described were too vague and general to support a finding that the beneficiary had been acting in a managerial or executive capacity for the foreign entity.

On appeal, the petitioner indicated that the beneficiary's job duties included, exercising discretion over day-to-day operations, hiring and firing people, managing components of the organization, and establishing the aims and policy of the company.

The record does not support the assertion that the principal duties of the beneficiary for the foreign entity are executive and managerial in nature. The description of the job duties provided by the petitioner essentially serves to paraphrase the elements of the regulatory definition of managerial and executive capacity. No concrete description is provided to explain the beneficiary's activities in the day-to-day execution of her position with the foreign entity. Given the indefinite description of the beneficiary's job duties abroad, the petitioner has not established that the beneficiary has been employed in a primarily managerial or executive position for one continuous year in one of the three years prior to the beneficiary's application for admission into the United States.

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.