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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



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IMMIGRATION AND NATURALIZATION SERVICE  
WASHINGTON, D.C.

File: LIN-00-029-54507

Office: Nebraska Service Center

Date: **JAN 03 2002**

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)

IN BEHALF OF PETITIONER: [Redacted]

**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.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner, a multiple small business and investment company, seeks to employ the beneficiary temporarily in the United States as president of its new office for one year. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. and foreign entities.

On appeal, counsel states that the documentation demonstrated appropriate affiliation between the Kuwait company, Wardat Al Worood Ladies Beauty Company, and the new American entity.

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 regulation at 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.

The issue in this proceeding is whether a qualifying relationship exists between the U.S. and foreign entities.

The Petition for a Nonimmigrant Worker (Form I-129) was filed on November 3, 1999. The petitioner seeks to employ the beneficiary in its new office for a one-year period at an annual salary of

\$48,000 and 5% net profit. The petition indicates that the U.S. company is an affiliate of the company abroad.

The regulation at 8 C.F.R. 214.2(l)(1)(ii)(L) states in pertinent part that:

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 indicates that the foreign company is owned by two individuals, 49% of the foreign company is owned by [REDACTED] and 51% is owned by [REDACTED]. [REDACTED] states that under the laws of Kuwait, a non-Kuwait citizen cannot own more than 49% of a Kuwait company. The foreign company is controlled by Gol Afrand after he entered into an agreement with Aisha Al Sharah whereby she gave him control of the company.

The U.S. Company is said to be owned and controlled by two individuals in a joint venture agreement in which [REDACTED] owns 50% and [REDACTED] owns 50%. The Articles of Incorporation show that the company is authorized to issue 1,000 shares of its stock. The record does not contain any stock certificates showing who owns the U.S. entity.

To establish eligibility in this case, it must be shown that the foreign and U.S. entities share common ownership and control. The record shows that the foreign entity is owned by [REDACTED] and controlled by [REDACTED]. The U.S. entity is said to be owned and controlled by [REDACTED] and [REDACTED]. However, the petitioner has not established the actual ownership of the U.S. entity. Further, the definition of a subsidiary includes a provision for a parent company that owns 50 per cent of a 50-50 joint venture. There are no provisions in statute, regulation, or case law that allow for the recognition of veto power or negative control in other than a 50-50 joint venture. As evidence does not demonstrate that the U.S. and foreign entities share common ownership and control, a qualifying relationship has not been shown to exist between the two entities. For this reason, the petition may not be approved.

Another issue in this proceeding, not raised by the director, is whether the beneficiary has been employed abroad and will be employed in the proposed position in the United States in a primarily executive or managerial capacity. As this matter will be

dismissed on the grounds discussed, these issues 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.