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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



File: LIN 00 120 51978 Office: NEBRASKA SERVICE CENTER Date: 11 JAN 2002

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

Public Copy

INSTRUCTIONS:

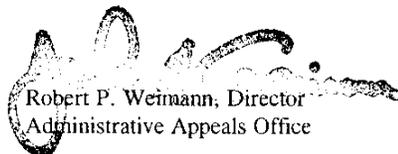
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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. Weimann, 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 described as a tool manufacturer and distributor who seeks to employ the beneficiary temporarily in the United States as the vice president of sales and marketing. The director determined that the petitioner had not established ownership of the foreign or United States entity.

On appeal, the petitioner states that it is providing further evidence and clarification for the petition.

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 petitioner is a Canadian company, incorporated in January of 1994. The petitioner engages in the business of manufacturing tools for sale and distribution to the industrial and commercial market and the retail tools market. Its unaudited financial statement dated December of 1998 indicates that the petitioner is authorized to issue 10,000 shares without par value and has issued 375 shares of its stock. The petitioner is applying for the intended beneficiary of this petition to work for the petitioner's United States based company, namely Mega Tools U.S.A. Inc. Mega Tools U.S.A. Inc. was incorporated in April of 1994 in the state of Washington.

The petitioner in this case does not appear to be the appropriate party to file this petition. As of September 1999, it appears the petitioner may no longer have an ownership interest in the proposed employing entity. The petitioner's only interest in this application appears to be as the current employer of the intended beneficiary. To further confuse this matter, information submitted by the petitioner subsequent to the initial petition was submitted on the letterhead of Mega Tools U.S.A. Inc., the proposed employing entity.

Notwithstanding the above, the petitioner has not submitted sufficient evidence to establish its ownership and the qualifying relationship with the United States entity.

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 operation 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 petitioner submitted documents with the petition that reveal it had issued 375 shares of its stock. The identity of who owned those shares and in what proportion is not clear. The petitioner also submitted with the petition, a 1998 Canadian Tax Remitter Registration Form that indicates it owned 100% of Mega Tools U.S.A. Inc. in 1998. The petitioner's 1998 unaudited financial statement indicates it owned 1000 shares of 1000 issued common shares in 1998. The unaudited 1998 financial statement of Mega Tools U.S.A. indicates that it had issued 1000 common shares out of an authorized 10,000 common shares of its stock. The petitioner indicated in the petition that the beneficiary's office would be in Las Vegas, Nevada.

In the response to the director's request for evidence, the petitioner provided a list of stockholders but did not identify the company in which these stockholders held stock. It also provided its organizational chart depicting the employment of seven individuals. The petitioner also provided pages 21 and 22 of a 26-page document. The pages provided may relate to a disclosure statement regarding Megapro Tools Inc.

The petitioner indicated in its response to the director that the only location of the office in the United States will [be] the home (residence) office of the beneficiary. The letter reflects that the location of the office will be determined upon approval of the beneficiary's application. As noted earlier, the petitioner's letterhead changed from Mega Tools, Ltd to Mega Tools U.S.A. Inc. in the response to the director. The printed letterhead gave a street address for Mega Tools U.S.A. Inc. in the state of Washington.

On appeal, the petitioner submitted a purchase and sale agreement between the petitioner and a Nevada company identified as Megapro Tools Inc. The petitioner also submitted the Registration Statement under the Securities Act of 1933 and a prospectus for Megapro Tools Inc. The purchase and sale agreement and the prospectus, when read together, reveal that in September of 1999, the petitioner agreed to sell its 1000 shares of Mega Tools U.S.A. Inc., to the Nevada corporation, Megapro Tools Inc. According to

their interest in the petitioner to Megapro Tools Inc.

The petitioner has not submitted sufficient evidence to establish its ownership and control. It has not submitted sufficient evidence to establish a qualifying relationship with a United States 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 entity 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 submitted the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings or other evidence formalizing the various transfers discussed in the sale and purchase agreement and the prospectus of Megapro Tools Inc. In addition, the number of shares issued by the various companies and transferred according to these documents does not tally. Without full disclosure of all relevant documents, the Service is unable to determine the elements of ownership and control of the petitioner and of the United States entities.

In addition to the failure to submit adequate evidence to establish ownership and control, the petitioner has not submitted sufficient evidence demonstrating that it will have a United States office or that the intended beneficiary will act in a managerial or executive capacity.

8 C.F.R. 214.2(1)(3)(v) states that if 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;

((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.

It appears that the petitioner intends that the beneficiary, if approved, would set up a new office in Las Vegas, Nevada. As referenced above, the petitioner indicates that the actual location of the new office is undetermined until the beneficiary's application is approved. After the application is approved the location will be in the intended beneficiary's home. Again it is noted that the letterhead of Mega Tools U.S.A. Inc. reflects a street address for the company in the state of Washington. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided inconsistent evidence as to the physical location or proposed physical location of the United States office. In addition, the petitioner has not provided a business plan that adequately demonstrates physical premises have been secured.

Finally, the petitioner has not provided evidence that the intended beneficiary will be acting primarily in a managerial or executive capacity. The petitioner has not provided a comprehensive description of the specific scope and nature of the beneficiary's routine duties. In the absence of a credible business plan, supported by substantiating documentation, the general description of the duties of the proffered position is not sufficient to establish that the intended beneficiary will be acting primarily in an executive or managerial capacity.

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.