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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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AUG 06 2003

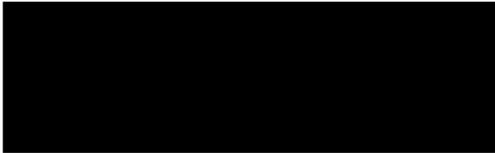
File: SRC 02 128 50988 Office: TEXAS SERVICE CENTER Date:

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:



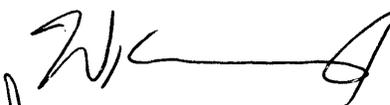
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is described as an import and export company and a company that is interested in small business investments. It seeks authorization to employ the beneficiary temporarily in the United States as a manager. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. company and the foreign company because the ownership of the U.S. company is different than that of the foreign company.

On appeal, counsel reiterates the same assertions made to the director in the response for additional evidence by stating that the petitioner is the subsidiary of the foreign company and they have a qualifying relationship under Bureau precedent decisions because the same group of individuals owns a majority interest in both companies.

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.

The regulation at 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 regulation at 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.

At issue in this proceeding is whether a qualifying relationship exists between the petitioning company and the claimed parent company.

Bureau regulations at 8 C.F.R. § 214.2(1)(ii)(G) define the term "qualifying organization" as follows:

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)(ii)(I) states:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

8 C.F.R. § 214.2(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(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)(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, [REDACTED] located in Alpharetta, Georgia, claims to be the subsidiary of [REDACTED] of Bangladesh. In support of this claim, the petitioner submitted a letter from the foreign company stating that it was the parent company, and a Memorandum of Articles of Association of the foreign company that included a list of four shareholders and the amount of shares that each owned at the time said Memorandum was dated, November 11, 1995. The list of four shareholders consists of:

Mr.	[REDACTED]	300 shares
Mrs	[REDACTED]	300 shares
Mr.	[REDACTED]	300 shares
Mr.	[REDACTED]	100 shares

The Petitioner submitted a Certificate of Incorporation, Articles of Incorporation, and five stock certificates for the U.S.

company. These five stock certificates indicate the following shareholders and the number of shares held:

	1000 shares
	1000 shares
	500 shares
	1250 shares
	1250 shares

Additionally, the Form I-129 described the stock ownership and managerial control of each company as follows:

Parent: [redacted] 30%; [redacted] 30%; [redacted]
 [redacted] 30% [redacted] 10%

U.S: [redacted] 20%; [redacted] 20%; [redacted]
 [redacted] 10%; [redacted] 25%; and [redacted] 25%.

On March 27, 2002 the director issued a request for additional evidence stating that she was unable to complete the processing of the instant petition without additional documentation to show there is a qualifying relationship as defined in the regulations. The director noted that it appeared that the ownership is different for the U.S. company than that of the foreign company.

In response to the request for additional documentation, counsel asserts:

The partners owning a majority ownership in the Parent Company own 50% of the U.S. subsidiary, thereby establishing a qualifying relationship. The Parent Company is owned 30% by [redacted] and 30% by [redacted] who also own, collectively, 50% of the U.S. company. They also have as equal control over the U.S. company. Thus those individuals holding majority ownership interests in the parent company also hold 50% of the ownership in the U.S. subsidiary.

The director denied the petition noting that the response to the request for additional evidence included evidence that the ownership of the United States company was different than the foreign company. The director stated that "although two persons may own a majority of both companies it does not constitute a qualifying relationship as defined in the regulations."

On appeal counsel argues the same points that were provided in the response for additional evidence. Although counsel cites that *Matter of Tessel, Inc.*, 17 I&N Dec. 631 (AAC 1981) determined that a majority stock ownership in both companies is sufficient for the purposes of establishing a qualifying relationship, counsel is misconstruing the decision. The *Tessel* decision states "[w]here there is a high percentage of ownership and common management

between two companies, either directly or through a third entity, those companies are 'affiliated' within the meaning of that term as used in section 101(a)15(L) of the Act." The record of this proceeding does not demonstrate that there is a high percentage of ownership and common management between the two companies.

Even though counsel correctly states that *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982) determined ownership need not be majority if control exists, counsel has not provided evidence of either ownership or control by the foreign company of the U.S. company. Counsel's explanation of the stock ownership in the U.S. company and foreign company does not meet the statutory definition of qualifying relationship for the purposes of an L-1 nonimmigrant visa.

Counsel's arguments are not persuasive. 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 United States and foreign entities for purposes of this immigrant visa classification. *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); see also *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988) (in immigrant visa proceedings). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, *supra* at 595.

The regulation at 8 C.F.R. § 214.2(1)(3)(viii) specifically allows the director to request such other evidence as the director may deem necessary. While the petitioner has submitted stock certificates and Articles of Incorporation for the U.S. company and a Memorandum and Articles of Incorporation for the foreign company, the petitioner has not established that the foreign company owns and controls the U.S. company or that they share common ownership so that they may qualify as affiliates. Counsel claims that because two of the four shareholders of the foreign company collectively hold 60% of the stock issued for the foreign company and the same two shareholders collectively hold 50% of the shares issued for the U.S. company that they have majority stock ownership in both companies. However simply because the two entities have two stockholders in common does not prove that the foreign entity owns and controls the U.S. entity. Evidence that two of the four stockholders of the foreign company are also two of the five stockholders of the U.S. company does not demonstrate ownership and control. No evidence was submitted that proves that either of these two individual shareholders have the ability to combine their shares and act as one stockholder in order to create a majority in either the foreign or U.S. company. Additionally, the remaining three shareholders in the foreign

company are different from the remaining two shareholders in the U.S. company.

The record clearly indicates that the petitioning enterprise does not maintain a qualifying "affiliate" relationship with the overseas company. The evidence indicates that the foreign company is owned by four individuals. The petitioning entity in the United States is owned by five individuals. Accordingly, the two entities are not "owned and controlled by the same group of individuals, each individual owning controlling approximately the same share or proportion of each entity...." 8 C.F.R. § 214.2 (1) (1) (ii) (L) (2) (emphasis added). In addition, there is no single individual or parent entity with ownership and control of both companies that would qualify the two as affiliates. 8 C.F.R. § 214.2 (1) (1) (ii) (L) (1). Although counsel claims that the petitioning company and the overseas company are majority owned by the husband and wife due to the spousal relationship, this familial relationship does not constitute a qualifying relationship under the regulations. For this reason, the petition may not be approved.

There is no direct evidence in the record to support the petitioner's claim that the foreign entity owns and controls the U.S. entity. Consequently, it must be concluded that the petitioner has failed to demonstrate a qualifying relationship with a foreign entity pursuant to 8 C.F.R. § 214.2(1)(1)(ii)(G).

Beyond the decision of the director, the petitioner provided insufficient evidence to determine whether the petitioner has established that the beneficiary will be employed primarily in a managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary has been or will be managing the organization, or managing a department, subdivision, function, or component of the company. The petitioner has not shown that the beneficiary has been or will be functioning at a senior level within an organizational hierarchy. Further, the petitioner's evidence is not persuasive in establishing that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve her from performing non-qualifying duties. Based on the evidence submitted, it cannot be found that the beneficiary has been employed in a primarily executive or managerial capacity.

Additionally, the record describes the beneficiary as the stockholder of 20% of the petitioning company. 8 C.F.R. § 214.2(1)(3)(vii) states 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 that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In this case, the petitioner has not furnished evidence that the beneficiary's

services are for a temporary period and that the beneficiary will be transferred abroad upon completion of the assignment. As the appeal will be dismissed, these issues need not be examined further.

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.