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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street NW  
Washington, DC 20536



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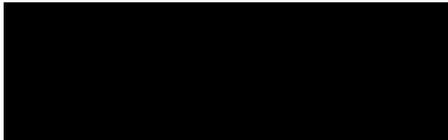
DEC 23 2003

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:



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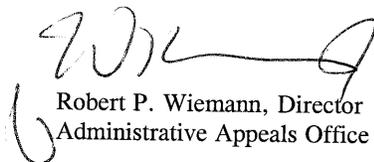
INSTRUCTIONS:

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 that 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 Citizenship and Immigration Services (CIS) 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, Nebraska Service Center, denied the nonimmigrant visa petition (L-1B). The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, International Armoring Corporation, avers that it is the parent of a Brazilian business, International Armoring of Brazil Limited. The petitioner states that it specializes in the armoring of passenger vehicles. The U.S. entity was incorporated on May 4, 1993 in the State of Utah. The petitioner now seeks to hire the beneficiary as a new employee. Consequently, in September 2001, the U.S. entity petitioned to classify the beneficiary as a nonimmigrant intracompany transferee (L-1B) for one year. The petitioner seeks to employ the beneficiary as the U.S. entity's vice president-international development at an annual salary of \$72,000.

On February 8, 2002, the director determined that: (1) the petitioner had failed to show that a qualifying relationship exists between the U.S. and foreign entities; and (2) the beneficiary did not qualify as a specialized knowledge worker. Consequently, the director denied the petition. On appeal, petitioner's counsel asserts that a qualifying relationship exists between the U.S. and Brazilian entities and that the beneficiary qualifies as a specialized knowledge worker.

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 meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

Under 8 C.F.R. § 214.2(1)(3), 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.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended serves in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Initially, the AAO will address the issue of whether the petitioner has established a qualifying relationship with the Brazilian entity. Qualifying organizations must meet certain criteria. In particular, the regulations at 8 C.F.R. § 214.2(1)(1)(ii)(G) state:

*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.

In pertinent part, the regulations define "parent," "branch," "subsidiary," and "affiliate" as:

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

\* \* \*

*Branch* means an operation division or office of the same organization housed in a different location.

\* \* \*

*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.

\* \* \*

*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.

8 C.F.R. §§ 214.2(1)(1)(ii)(I)-(K), (L).

The regulations 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 nonimmigrant visa petition. *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, 604 (Comm. 1988) (in immigrant visa proceedings). In the 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.*

In this instance, the Form I-129 states that the petitioner is the parent to the Brazilian entity. However, evidence submitted with the petition contained a significant inconsistency regarding ownership of the Brazilian company. On one hand, the petitioner claimed to own sufficient stock in the Brazilian entity to qualify as the Brazilian company's parent. On the other hand, the petitioner's initial evidence indicated that the U.S. entity owned only one percent of the Brazilian company's shares. Delta, a company apparently unrelated to the petitioner, appeared to own the remaining 99 percent shares of the Brazilian entity. The petitioner must provide independent objective evidence to resolve any inconsistencies in the record. Failure to provide such proof may cast doubt on the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-2 (BIA 1988).

Furthermore, the petitioner failed to supply critical supporting evidence such as copies of stock certificates or stock ledgers to resolve the inconsistencies and document a qualifying relationship. Going on record without supporting documentary evidence is insufficient for the purpose of meeting the burden of proof in these proceedings. *Ikea US, Inc. v. INS*, 48 F.Supp. 2d 22, 24-5 (D.D.C. 1999); see generally *Republic of Transkei v. INS*, 923 F.2d 175 (D.C. Cir. 1991) (discussing burden the petitioner must meet to demonstrate that the beneficiary qualifies as primarily managerial or executive); *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Thus, the director correctly determined that the petitioner had not established itself as having a qualifying relationship with the Brazilian entity.

The AAO acknowledges that, on appeal, the petitioner submitted new evidence which could establish a qualifying relationship. In particular, the petitioner now states that Brazilian counsel originally prepared the Brazilian entity's articles of incorporation incorrectly. The Brazilian attorneys recently wrote corrected articles of incorporation, which the Brazilian entity adopted. The amended articles of incorporation now indicate that the petitioner owns 99 percent of the Brazilian company, while Delta owns only one percent. Consequently, the petitioner's counsel contends that the petitioner now demonstrates the requisite controlling interest in the foreign entity.

The petitioner must, however, establish eligibility when the nonimmigrant visa petition is filed. CIS may not approve a visa petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). Moreover, the AAO will adjudicate the appeal based only on the record proceedings before the director. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). Therefore, the newly submitted evidence cannot establish a qualifying relationship on the date when the petition was filed. Nevertheless, the U.S. entity may file a new petition for consideration of the new evidence.

The AAO now turns to the question of whether the beneficiary qualifies as a specialized knowledge worker. In its Form I-129 and on appeal, the petitioner stated that the beneficiary qualifies for L-1B status. The regulations at 8 C.F.R. 214.2(l)(ii)(D) define "specialized knowledge":

*Specialized knowledge* means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In support of its claim that the beneficiary demonstrates specialized knowledge, the petitioner stated on the Form I-129 that the beneficiary's duties during the past three years were: "General Manager - set up operations, managed day to day operations." His proposed duties in the United States were: "Based out of world headquarters, monitor activities of other 6 facilities - set up controls." The petitioner's education and work experience were summarized as "extensive experience in foreign operations to include speaking Spanish & Portugese [sic]."

In December 21, 2001, letter, the petitioner provided further details pertaining to the beneficiary's specialized knowledge:

With the increasing international growth experienced in the last few years and foreseeing additional growth in demand for its products, [the petitioner] has created a new position within its infrastructure to coordinate the international operations of the company. This position is that of Vice President of International Operations. The leadership of our

company has decided to assigned [sic] [the beneficiary] to such position within our company.

\* \* \*

[The beneficiary] has been an employee of our Brazilian operations since 2 June 1998. Previous to that, he helped us as a consultant to set-up our plant in Sao Paolo. He possesses the special knowledge required in the peculiar industry of our product (armored passenger vehicles), our clientele, our suppliers, our equipment and materials, and has acted as the General Manager of [the Brazilian entity] since the above date. Together with his managerial skills, [the beneficiary] has the language skills (Spanish/Portuguese/English) that are required to fulfill the needs of our company and its subsidiaries located throughout the world.

In his position as Vice President of International Operations [the beneficiary] will supervise the manufacturing and marketing operations of our plants worldwide. With his previous specialized knowledge of the Brazilian operation, he will help implements [sic] critical manufacturing and marketing processes company wide. He will report directly to the C.E.O. and President of the company.

The December 21 letter and Form I-129 merely assert that the beneficiary has specialized skills. Other than mentioning that the beneficiary has certain language skills, the petitioner did not list what specialized knowledge the beneficiary presents. For example, the petitioner could have explained what specialized knowledge the armored passenger vehicle industry requires. In turn, the petitioner could have delineated which elements of that knowledge the beneficiary has. As previously noted, going on record without supporting documentary evidence is insufficient for the purpose of meeting the burden of proof in these proceedings. *Ikea US, Inc. v. INS, supra; Republic of Transkei v. INS, supra; Matter of Treasure Craft of California, supra.* Thus, the director properly found that the beneficiary lacked the requisite specialized knowledge to qualify for a nonimmigrant visa.

A March 2, 2002 letter from the petitioner's chief executive officer and counsel's brief on appeal add information about the beneficiary's duties. The assertions of counsel do not,

however, constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Nonetheless, if documented, the information in the March 2 letter and in counsel's brief could demonstrate that the beneficiary is a specialized knowledge worker. For instance, the additional evidence might demonstrate that the beneficiary has knowledge valuable to the petitioner's competitiveness in the marketplace or the petitioner has been utilized abroad in a capacity involving significant assignments which have enhanced the petitioner's productivity, competitiveness, image, or financial position. Additionally, the evidence may demonstrate that the beneficiary has knowledge of the foreign firm's business procedures or methods of operation to the extent that the U.S. firm would experience a significant interruption of business in order to train a U.S. worker to assume those duties.

However, as previously explained, the petitioner must establish eligibility when the nonimmigrant visa petition is filed. The AAO may not approve a visa petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire, supra*. Moreover, the AAO will adjudicate the appeal based only on the record proceedings before the director. *Matter of Soriano, supra*. Therefore, the newly submitted evidence cannot establish that the beneficiary was a specialized knowledge worker on the date when the petition was filed. Nevertheless, the U.S. entity may file a new petition for consideration of the new evidence.

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.