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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 01 020 50496 Office: CALIFORNIA SERVICE CENTER Date: JAN 30 2003

IN RE: Petitioner:
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]

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. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a construction company. It seeks to employ the beneficiary temporarily in the United States as its president, vice president, and secretary. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. entity and the beneficiary's foreign employer.

On appeal, the petitioner claims that a qualifying relationship has been established since the denial and submits evidence in support thereof.

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(l)(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 (l)(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.

8 C.F.R. 214.2(l)(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 (l)(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.

The U.S. petitioner states that it was established in 1999 and that it is an affiliate of Aichi Title Co., Ltd., located in Saitama, Japan. The petitioner claims that the beneficiary is its sole shareholder and that the beneficiary owns 37%, a majority, of the foreign entity's shares.

At issue in this proceeding is whether a qualifying relationship exists between the U.S. petitioner and a foreign 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 (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.

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 record reflects that the Service sent the petitioner a notice, dated January 22, 2001, requesting additional information. The Service informed the petitioner that its control structure is insufficient to demonstrate that the U.S. and foreign entities are affiliates. The petitioner was instructed to submit evidence of all of the shareholders of the foreign entity, as well as evidence showing that the U.S. and foreign entities have common ownership and control.

As stated in the director's denial, the petitioner responded with a letter from counsel which provided the following breakdown of share ownership of the foreign entity: 37% is owned by the beneficiary; 20% is owned [redacted] 27% is owned by [redacted] 10% is owned [redacted] and 6% is owned by [redacted] Accordingly, the director concluded that the

U.S. and foreign entities are not similarly owned and controlled and that as a result the petitioner failed to establish an affiliate relationship with the entity abroad.

On appeal, counsel asserts that the foreign and U.S. entities are similarly owned and controlled and that a qualifying relationship thereby does exist. Counsel provides the following breakdown of ownership and control for the petitioner's one million issued shares: 370,000 shares are issued to the beneficiary; 200,000 shares are issued to [redacted] 270,000 shares are issued to [redacted] 100,000 shares are issued to [redacted] and 60,000 shares are issued to [redacted] Counsel also submitted the corresponding share certificates and a written record of the petitioner's Special Meeting of the Stockholders, Officers, and Directors, in which the petitioner's shares were disposed of in the manner specified above. However, both the share certificates and the record of the petitioner's special meeting are dated April 19, 2001, six months after the petition was filed. 8 C.F.R. 103.2(b)(12) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." Accordingly, the petitioner has submitted insufficient evidence to establish that there was a qualifying affiliate relationship between the U.S. and foreign entities at the time the petition was filed. For this reason, the petition may not be approved.

On review, there is no evidence to demonstrate that a qualifying relationship exists between the U.S. petitioner and the beneficiary's foreign employer. Therefore, the beneficiary is ineligible for L-1 visa classification as an intracompany transferee under section 101(a)(15)(L) of the Immigration and Nationality Act.

Beyond the decision of the director, the lease assignment submitted by the petitioner as proof that a sufficient premises has been secured does not indicate the address of the leased premises. Therefore it does not appear that sufficient evidence has been submitted to establish that premises have been secured for the petitioner's business. Furthermore, the petitioner has not submitted a description of the beneficiary's past or proposed duties so that the Service can determine whether the beneficiary has been and will likely be employed in a capacity that is primarily managerial or executive. However, as the appeal will be dismissed due the petitioner's failure to establish the existence of a qualifying relationship, these issues need not be addressed 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.