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ADMINISTRATIVE APPEALS OFFICE
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File: WAC 02 052 54555 Office: CALIFORNIA SERVICE CENTER Date:

NOV 20 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)

ON 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 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, California 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 importer and exporter of computer furniture. It seeks to employ the beneficiary temporarily in the United States as a general manager. The director determined that the petitioner had failed to establish that a subsidiary relationship exists between the foreign and the U.S. entities.

On appeal, counsel contends that a qualifying relationship does exist between the foreign and U.S. entities.

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 regulations at 8 C.F.R. § 214.2(1)(3) state 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.

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

According to the evidence contained in the record, the petitioner claims to be a subsidiary of Ding Long Enterprise, located in Taiwan. The petitioner was incorporated in 1999 and claims to be an importer and exporter of computer furniture. The petitioner declared 15 employees and \$3,000,000 in gross annual income. The petitioner seeks the beneficiary's services as a general manager for a period of three years, at a yearly salary of \$35,000.

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

The regulation at 8 C.F.R. § 214.2(1)(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.

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), (J), (K), and (L).

The petitioner initially submitted: a copy of stock certificate number two, dated March 1, 2000, issuing Chin Hsing Wang 15,000 shares of Leda Home Furnishing stock; Articles of Incorporation for the U.S. entity, dated November 1, 1999, which showed that 10,000,000 shares of common stock were to be the aggregate number of shares to issue; and a copy of a business license of Ding Long Enterprise issued by the Taiwanese Department of Commerce on December 9, 1997, with capital of NY\$5,000,000.00.

The petitioner described the stock ownership of the Taiwan and U.S. entities on the Form I-129 as follows:

Leda Home Furnishing's jointly held by Chih Hsing Wang (President of Ding Long Enterprise) and Harry Lee. Chih Hsing Wang is the majority holder of Leda Home Furnishing. Ding Long enterprise is owned by Wei De Chen. Chih Hsing Wang is the President of Ding Long Enterprise.

The director determined that the petitioner submitted insufficient evidence to establish a qualifying relationship between the U.S. and foreign entities. Subsequently, the director issued a request for additional evidence regarding the ownership and control of the petitioning company. The director sought documents regarding the relationship between the U.S. and foreign organizations:

QUALIFYING RELATIONSHIP: Submit the following evidence to establish that the foreign and U.S. company have a qualifying relationship as defined in the Regulations:

- **ANNUAL REPORT:** Submit a copy of the foreign company's annual report that lists all affiliates, subsidiaries, and branch offices, and percentage of ownership.
- **STOCK LEDGER:** Submit copies the U.S. company's stock ledger showing all stock certificates issued to the present date including total shares of stock sold, names of shareholders, and purchase price.

The petitioner resubmitted a copy of stock certificate number two, but failed to provide all other requested documentation.

The director denied the petition after determining that the record did not establish the existence of a qualifying relationship between the U.S. and foreign entities. He further noted that evidence in the record established that the U.S. entity was owned by two individuals, [REDACTED] and that the foreign organization was owned by one individual [REDACTED].

On appeal, counsel asserts that the director's decision was incorrect, and submits a brief and evidence in support of this contention. Counsel describes the stock ownership percentages for the U.S. entity as follows:

LEDA HOME FURNISHINGS, INC.

<u>Shareholder</u>	<u># of shares</u>	<u>% of shares</u>
[REDACTED]	15,000	50
[REDACTED]	15,000	50

Counsel further describes the stock ownership percentages for the foreign entity as follows:

DING LONG ENTERPRISE CO., LTD.

<u>Shareholder</u>	<u>% of shares</u>
[REDACTED]	48
[REDACTED]	01
[REDACTED]	01
[REDACTED]	01
[REDACTED]	48

Counsel includes a copy of stock certificate number three, dated September 28, 2001, issuing Ding Long Co., Ltd. 15,000 shares of Leda Home Furnishing stock.

Counsel continues by stating that the evidence shows that both companies are controlled by members of the same immediate family; in that over 70 percent of the shares of both companies are controlled by brothers [REDACTED]

Counsel further asserts that the U.S. and foreign entities are closely held corporations, and that all stock transfers are done intra-family and without payment of purchase price. Counsel concludes by stating that the close family relationship of both company's shareholders and the 50 percent ownership of Leda Home Furnishing stocks by the foreign entity is indicative of a parent-subsidiary relationship between the two companies.

Counsel's assertions are not persuasive. After the director requested additional documentation on this issue the petitioner failed to submit sufficient evidence. On appeal, the petitioner now submits evidence which was not submitted to the director and which may not have been in existence at the time 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." Where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition is adjudicated, evidence submitted on appeal will not be considered for any purpose, and the appeal will be adjudicated based on the record of proceedings before the director. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The petitioner's new evidence will not be considered. As shall be discussed, the record as presently constituted does not demonstrate the existence of a qualifying relationship between the United States entity and the foreign entity.

The evidence of record is not persuasive in establishing a qualifying relationship between the petitioner and the Taiwanese entity. 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 visa classification. See *Matter of Church of Scientology International*, 19 I&N Dec. 593 (Comm. 1988). 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. *Id.* at 595.

A petitioner's assertions, by themselves, will not suffice to establish the essential elements of ownership and control. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner must disclose all documents relating to the ownership and control of the two entities, which include, but are not limited to, copies of stock or interest certificates, a corporate stock ledger, stock certificate registry, corporate bylaws, minutes of relevant annual shareholder meetings, articles of organization, or operational agreements.

The AAO first turns to evidence of the Taiwanese entity's ownership. There is no documentary evidence to establish the individuals that own Dong Long Enterprise, the Taiwanese entity. Therefore, Citizenship and Immigration Services (CIS) cannot determine this element of eligibility. Going on record without supporting documentary evidence is not sufficient for the

purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra*. Regarding the U.S. entity's ownership, the petitioner has submitted confusing evidence regarding this issue.

When filing the petition, the petitioner stated in a letter supporting the I-129 petition, [REDACTED] Enterprise [the Taiwanese entity] is the 100% owner of [the petitioner]." However, as evidence of its ownership, the petitioner submitted only a copy of stock certificate number two, which was issued to Chih-Hsing Wang for 15,000 shares of the petitioner's stock. The petitioner failed to submit any evidence to support its claim that the Taiwanese entity, Dong Long Enterprise, owned its shares of stock.

Further confusing the petitioner's ownership structure was the petitioner's response to the director's request for evidence. The response included a copy of the petitioner's 1999 corporate income tax return (Form 1120). In Schedule E of the form, the petitioner indicated that Harry K. Lee and Chih-Hsing Wang each owned 50 percent of the petitioner's common shares of stock. Again, the petitioner failed to submit any evidence to support its initial claim that the Taiwanese entity, Dong Long Enterprise, owned its shares of stock.

It is incumbent upon a 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). Here, the petitioner has not presented any credible documentary evidence that Dong Long Enterprise owns the petitioner in whole, or in part. For this reason, the director's decision will not be disturbed.

The AAO does note that counsel asserts on appeal that [REDACTED] Enterprise and [REDACTED] each own 50 percent of the petitioner's shares of stock. In support of his claim, counsel submits: the previously submitted stock certificate number two, issued to [REDACTED] for 15,000 shares of the petitioner's stock; and stock certificate number three, issued to [REDACTED] Enterprise for 15,000 shares of the petitioner's stock. Although, as noted previously, the AAO will not consider this evidence on appeal, it is worth noting that, even if this

evidence could be considered, it would not clarify the qualifying relationship issue.

First, the AAO notes that the petitioner has never submitted or explained the existence of stock certificate number one. The petitioner has only supplied copies of stock certificate numbers two and three; it has never submitted a copy of its stock ledger to show to whom stock certificate number one was issued, and whether this certificate was cancelled. Second, the stock certificates submitted on appeal only pertain to the issue of the petitioner's ownership; they do not clarify the foreign entity's ownership or the issue of control over the petitioner. Control may be *de jure* because an individual or entity owns 51 percent of a company's outstanding shares of stock, or it may be *de facto* because an individual or entity controls the voting of shares through partial ownership and by possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). Here, because [REDACTED] Enterprise and [REDACTED] allegedly own the petitioner in equal shares, there is no clear evidence of control.

Based upon the above discussion, the petitioner has not established a qualifying relationship between it and Dong Long Enterprise.

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.