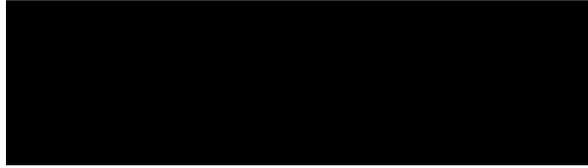


**PUBLIC COPY**

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

D7

OFFICE OF ADMINISTRATIVE APPEALS  
CIS, AAO,, 20 Mass. Ave., 3rd Floor  
425 Eye Street N.W.  
Washington, D.C. 20536



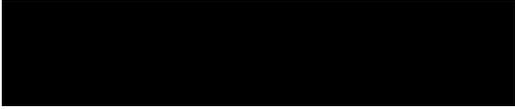
File: LIN 01 184 53333

Office: NEBRASKA SERVICE CENTER

Date:

NOV 21 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: Self-represented

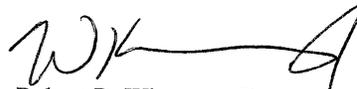
**INSTRUCTIONS:**

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 the 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 nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as a computer consulting company. It seeks authorization to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge, namely as its software engineer. The director concluded that the petitioner had not established that a qualifying relationship exists between the petitioner and the overseas company. The director further determined that the beneficiary would not be employed in a position involving specialized knowledge.

On appeal, the petitioner asserts that it and its foreign counterpart are owned equally by the same individuals. The petitioner also claims that the proposed position is one which requires specialized knowledge. Additional evidence is submitted.

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.

The first issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the petitioner and the overseas company.

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.

The regulations at 8 C.F.R. § 214.2(1)(1)(ii)(I) state:

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

The regulations at 8 C.F.R. § 214.2(1)(1)(ii)(J) state:

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

The regulations at 8 C.F.R. § 214.2(1)(1)(ii)(K) state:

*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.

The regulations at 8 C.F.R. § 214.2(1)(1)(ii)(L) state, 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 indicates that the foreign entity is its subsidiary. On July 6, 2001, the Director sent the petitioner a notice requesting that additional evidence be submitted. The petitioner was asked, in part, to submit evidence establishing that it and a foreign entity are commonly owned and controlled.

In response, the petitioner submitted a statement explaining that it is co-owned by Nitin and Alaka Sarangdhar who also have shares of the foreign subsidiary. Supporting documentation indicates that the foreign entity issued 830 shares of which 120 shares were allotted to Mrs. [REDACTED] on February 4, 1993. A document titled "Return of Allotments" indicates that 120 shares were returned on April 2, 1993. And a third document indicates that [REDACTED] and [REDACTED] each own 25 of the foreign entity's shares.

The only documentation in regards to ownership of the petitioning entity is a photocopy of an unsigned stock certificate, dated October 1990, indicating that Mrs. [REDACTED] owns 100 shares. The record also contains a notice from the Internal Revenue Service (IRS), dated December 24, 1990, notifying the petitioner of the IRS's acceptance to treat the petitioner as an S-corporation.

The director denied the petition, noting that the documentation submitted does not clearly establish ownership of the overseas entity. The director also determined that the stock certificate reflecting Mrs. [REDACTED] ownership interests was submitted unsigned, and, therefore, fails to establish that the shares were actually issued.

On appeal, the petitioner disputes the director's findings and submits additional evidence, including a statement explaining that the U.S. petitioner is 100% owned by Mrs. [REDACTED]. The petitioner added that Mrs. [REDACTED] resides with her husband in the state of Oregon "where their assets are shared equally." Contrary to the petitioner's apparent assumption, the fact that a state's laws treat marital property as jointly owned, regardless of title, does not mean that the same inference carries over to these proceedings. Therefore, where the petitioner submits a valid stock certificate indicating that Mrs. [REDACTED] owns all of the issued shares of the petitioning organization, the AAO does not treat those shares as jointly owned by both husband and wife. In the instant case, the petitioner submits a signed stock certificate issued to Mrs. [REDACTED] indicating the issuance of 100 shares. There is no documentation indicating that Mr. [REDACTED] has an ownership interest in the petitioning entity. Therefore, the AAO cannot infer that shares issued to Mrs. [REDACTED] are jointly owned by her and her husband.

The petitioner further explains that 92.5% of the foreign entity's shares are owned by Mr. [REDACTED] and Mrs. [REDACTED] and provides the following description of the breakdown of ownership:

475 shares belonging to Mr. [REDACTED] 355 shares to Mrs. [REDACTED] and 95 shares to Mrs. [REDACTED] and Mr. [REDACTED]

In regards to the foreign entity's ownership, the petitioner also submits share certificates reflecting the issuance of 95 shares on November 2, 1994, and the issuance of 830 shares on November 23, 2001. Contrary to the petitioner's assertion regarding ownership of the foreign entity's shares, all of the share certificates name [REDACTED] and [REDACTED]

[REDACTED] as joint holders of the shares. There is no indication that any of the shares are individually owned. 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). It is noted that in the instant case, the petitioner has neither explained, nor even acknowledged the existence of a factual discrepancy.

More importantly, the fact that the petitioner readily claims that the U.S. entity is 100% owned by one individual while ownership of the foreign entity is divided among at least two individuals negates the presence of a qualifying relationship between the two entities, as they are clearly not commonly owned and controlled. As such, the petitioner has failed to prove that a qualifying relationship exists between it and a foreign entity. Accordingly, this petition cannot be approved.

The other issue in this proceeding is whether the proposed position in the United States requires an individual with specialized knowledge.

In the petition, the beneficiary's proposed duties are described as "working with the local group in Synopsys to get the technical issues resolved to set up process for development of models from India."

In the request for additional evidence, the petitioner was instructed, in part, to submit evidence establishing that the position with the U.S. petitioner requires a person with specialized knowledge.

In response to the above request, the petitioner provided the following statement:

[REDACTED] job here will require him to learn the new technologies developed in Synopsys, understand development environment, to architect the necessary environment for a better process in our Indian organization. He will also be involved in technical discussion regarding new technologies as they fit in the process for development and experimentation and feasibility for such ideas here. . . .

The petitioner also provided the following breakdown of duties required in the proposed position:

10% Customer Interface - Mr. [REDACTED] will confer with customers from organizational units involved to analyze current operational procedures, identify problems, and learn specific data input and output requirements . . .

10% Analysis - [the beneficiary] will review and analyze computer system capabilities, workflow and scheduling limitations to determine if requested programs or program changes are possible within the existing systems.

30% Design - [the beneficiary] will design specific software to meet project needs by preparing workflow charts and diagrams to specify in detail operations to be performed by equipment and computer programs and operations to be performed by personnel in the respective systems.

20% Programming - [the beneficiary] will create and write programs.

10% Installing, Testing and Troubleshooting - [the beneficiary] will install, test and modify programs. In the process of implementing systems and troubleshooting, [the beneficiary] will upgrade systems and correct errors to maintain systems after implementation.

20% Making sure that the procedures are usable and feasible from Pune, India - Completion of the development will include fitting and actually testing, debugging, troubleshooting programs to make sure that they work from NitAl's office in Pune, India.

In the denial, the director determined that even though the beneficiary may actually possess specialized knowledge, the record does not establish that specialized knowledge is required to fill the position in the United States.

On appeal, the petitioner claims that the position in the United States requires specialized knowledge to understand the complex nature of the mechanism and tools used to construct the "necessary environment" for the overseas entity. The petitioner also states that the beneficiary's specialized knowledge is required for the purpose of determining the various approaches that may be used during the course of software development.

While the petitioner's explanation indicates the need to hire a person with knowledge and experience in the field of software

engineering, which the petitioner clearly possesses, the plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field. The record as presently constituted is not persuasive in demonstrating that the beneficiary would need specialized knowledge in order to fill the proposed position. Simply 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*, 14 I&N Dec. 190 (Reg. Comm. 1972). For this additional reason, the petition may not be approved.

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.