

**PUBLIC COPY**

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

**D7**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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



**SEP 12 2003**

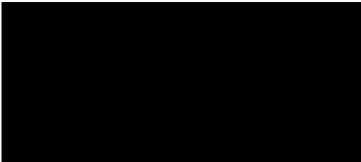
File: WAC 01 023 56556 Office: CALIFORNIA SERVICE CENTER Date:

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)

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

The petitioner is an importer of furniture and handicrafts from India. It seeks to employ the beneficiary as its director of marketing and chief executive officer. The director determined that the petitioner had not established a qualifying relationship with the foreign entity.

On appeal, counsel indicates his understanding that the director's denial was based upon the "inappropriate ownership" of the two companies. Counsel documents actions concerning the ownership of the two entities that have been taken since the visa petition was filed.

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(l)(14)(ii) state that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The first issue in this proceeding is whether the petitioner and the foreign entity are qualifying organizations.

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 operation 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 record indicates that [REDACTED] is owned 50 percent by [REDACTED] and 50 percent by [REDACTED]. The record also indicates that the parent company in India is owned by [REDACTED] and [REDACTED] each owning and controlling the same proportion of 33.33 percent.

The director determined that the petitioner had not established a qualifying L-1 relationship as of the date of filing the petition.

On appeal, counsel indicates that [REDACTED] has sold his interest in the parent company in India and that [REDACTED] now owns 53.3 percent while [REDACTED] owns 46.7 percent of the overseas company. Counsel also indicates that [REDACTED] sold 3.3 percent of her shares in the petitioning enterprise to [REDACTED] and now owns 46.7 percent of the U.S. company and [REDACTED] now owns 53.5 percent of the enterprise.

On October 24, 2000, when the visa petition was initially filed, a qualifying relationship did not exist between the United States entity and the foreign entity. On January 27, 2001, the ownership of the Indian company was amended. On May 10, 2001, the ownership of the petitioning firm was amended. In this case, the petitioner must establish eligibility at the time of filing; See 8 C.F.R. § 103.2(b)(12); *Matter of Izummi*, 22 I&N Dec. 169 (AAO 1998). Consequently, the petitioner has not demonstrated that a qualifying relationship existed between the U.S. and foreign entities at the time of the filing of the petition. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not provided sufficient evidence to demonstrate that the beneficiary's employment in the United States will be managerial or executive and that the petitioner has secured adequate premises in which to conduct business. As this matter will be dismissed on the grounds discussed, 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.