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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



SEP 24 2003

File: SRC 02 141 50523

Office: TEXAS 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 Acting Director, Texas Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is engaged in the baking machinery industry. It seeks to employ the beneficiary temporarily in the United States as its executive director/international marketing and commercial manager. The acting director determined that the petitioner had not established a qualifying relationship with the foreign entity.

On appeal, counsel states that the acting director incorrectly applied the law given the facts submitted. Counsel further states that the acting director's analysis used in reaching her decision was inconsistent with the information provided and in clear violation of applicable regulations and precedent decisions.

Counsel argues that according to the operating agreement of the petitioner, the management of the limited liability company has been vested in three managers, Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] and therefore, the limited liability company is considered a "manager-managed" company. Counsel states that as a result, any matter relating to the management of the company's business operation is exclusively decided by the managers who are, at the same time, the controlling managers of the parent company. Counsel indicates that these managers have appointed themselves as the Board of Directors of the U.S. company to preserve the continuity of control by the parent company over the U.S. entity. Counsel requests that the visa petition be approved.

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 issue to be discussed in this proceeding is whether the petitioner and the foreign entity are qualifying organizations. The petition indicates that a subsidiary relationship exists between the U.S. and foreign entities. On appeal, counsel contends that an affiliate relationship exists between the two entities as both are owned and controlled by the same group of individuals.

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.

In this case, the membership interests of the petitioning firm are held by eleven individuals as follows:

	34.81 percent
	10.74 percent
	9.50 percent
	8.33 percent
	8.33 percent
	6.08 percent
	6.08 percent
	5.92 percent
	4.16 percent
	3.50 percent
	2.50 percent

The shares of stock of the petitioner's claimed affiliate abroad, [REDACTED] S.R.L., are held by two individuals as follows:

	50 percent
	50 percent

Counsel's argument that the common managerial control of both firms exercised by three persons who hold ownership interests in both enterprises is sufficient to establish a parent-subsiary relationship is not persuasive. The two entities are not owned by the same parent or individual, or by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity. Therefore, a qualifying relationship between the U.S. entity and the beneficiary's foreign employer has not been shown to exist. For this 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.