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U.S. Department of Homeland Security
70 Mass, Rm A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

FILE: SRC 02 140 55093 Office: TEXAS SERVICE CENTER Date: APR 01 2004

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 on-line information service. It seeks to employ the beneficiary temporarily in the United States as the marketing director of its new office for five years. The director determined that: (1) the petitioner had failed to establish that a qualifying relationship exists between the foreign and the U.S. entities; and (2) the petitioner had failed to establish that it had secured sufficient physical premises to house the new office.

On appeal, the petitioner contends that a qualifying relationship does exist between the foreign and U.S. entities, and that sufficient physical premises had been secured to house the new office.

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)(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 (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.

(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.

* * *

The regulation at 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.

According to the evidence contained in the record, the petitioner claims to be an affiliate of L.L.C., located in Bahrain. The petitioner was incorporated August 21, 2001 and claims to be an on-line information service. The petitioner seeks the beneficiary's services as a marketing director for a period of five years, at a yearly salary of $12,000 plus allowance.

The first 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(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.

In pertinent part, the regulations define "parent," "branch," "subsidiary," and "affiliate" as:

> *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
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> *Branch* means an operation division or office of the same organization housed in a different location.
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> * * *
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> *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.
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> *Affiliate* means
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> (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
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> (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(l)(1)(ii)(I), (J), (K), and (L).

The petitioner initially submitted: a copy of stock certificate number one, dated September 16, 2001, issuing [redacted] 1500 shares of [redacted] Corporation stock; a copy of stock certificate number two, dated September 16, 2001, issuing [redacted] 500 shares of [redacted] Corporation Stock; and a copy of the [redacted] Corporation Certificate of Incorporation.

The director determined that the petitioner had not submitted sufficient evidence and requested additional evidence in order to complete the processing of the petition. The director specifically stated:

> Please submit documentary evidence, such as stock certificates, establishing the ownership of the foreign entity.

Please submit evidence the company in Bahrain is currently conducting business.

Please submit a copy of the lease agreement for the U.S. company.

In response to the director's request, the petitioner submitted a certificate dated February 7, 2002, which stated that: the foreign entity is a limited liability company that is engaged in computer programming and data processing, and browsing the worldwide web; Mr. is chairman; Mr. is a board member; and that they are authorized to sign on behalf of the company. The petitioner stated that the certificate has been notarized by the Ministry of Foreign Affairs, and serves to demonstrate that the foreign entity is in existence and officially conducting business. The petitioner reasoned that although the U.S. entity and the foreign entity have different Boards of Directors, they are both owned by the same individuals, thus establishing an affiliate relationship.

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. She further states that the evidence submitted does indicate the beneficiary and Mr. both own 1500 shares of Corp. stock, but that the evidence does not establish definitive ownership of the foreign entity. The director concluded that the evidence does not establish that the petitioner and the foreign company are affiliated based upon the criteria as it has not been shown that there is a high degree of common ownership of the two companies.

On appeal, the petitioner asserts its disagreement with the director's decision, and submits a brief and evidence in support of its assertion. On appeal, the petitioner submits copies of two L.L.C. stock certificates dated July 14, 1999.

The petitioner'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 that was not submitted to the director and which was 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 foreign 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 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 now turns to evidence of the foreign entity's ownership. There is no documentary evidence to establish what individuals or entity owns or controls the foreign entity, Bahrain Com L.L.C. Although the petitioner stated in the petition that the same shareholders own the U.S. and foreign entities, the petitioner has not submitted any independent documentary evidence to establish ownership and control of the foreign 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*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Here, the petitioner has not presented any credible documentary evidence that the two entities are owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. For this reason, the director's decision will not be disturbed.

The second issue in this proceeding is whether the petitioner has submitted sufficient evidence to establish that it has secured sufficient physical premises to house a new office.

In support of the visa petition, the petitioner stated that the U.S. entity currently has no physical address, and that the beneficiary will be responsible for acquiring a business address once he begins doing business in the United States.

The director determined that the petitioner had not submitted sufficient evidence and requested that it submit a lease agreement to establish that sufficient physical premises had been secured to house the new office.

In response to the director's request for additional evidence regarding the acquisition of sufficient physical premises, the petitioner stated that the U.S. entity was incorporated in the state of Delaware and that Delaware law does not require the company to have a lease agreement in the name of the company. The petitioner further stated that since filing the petition, the board has issued a resolution to open an office in the United States and that the registered agent's U.S. office address is currently being used as the U.S. entity's temporary address.

The director, in denying the petition, stated that as physical premises to house the new office had not been obtained at the time the petition was filed, it cannot now be approved.

On appeal, the petitioner submits a copy of a lease agreement dated September 12, 2002. The petition in the instant matter was filed April 4, 2002. The director's decision was issued August 20, 2002. After the director specifically requested additional documentation on this issue the petitioner failed to submit sufficient evidence. On appeal, the petitioner submits evidence that was not submitted to the director and which was not in existence at the time the petition was filed. Therefore, this new evidence will not be considered for purposes of appeal, and the appeal will be adjudicated based on the record of proceedings before the director. *See* 8 C.F.R. § 103.2(b)(12). *See also Matter of Soriano, supra.* The evidence contained in the record is not sufficient to overcome the objections of the director. Therefore, the evidence does not establish that the petitioner has secured sufficient physical premises to house the new office.

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.