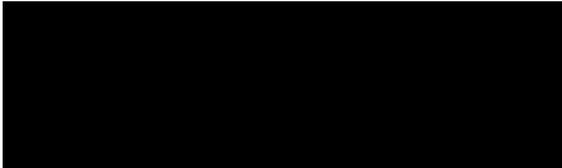


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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536

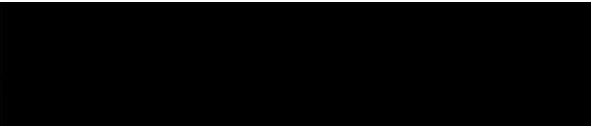


U.S. Citizenship  
and Immigration  
Services



FILE: SRC 02 096 51435 Office: TEXAS SERVICE CENTER Date: APR 21 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:



**PUBLIC COPY**

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

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 an automobile repair business. It seeks to employ the beneficiary temporarily in the United States as its president. The director denied the petition based on the determination that the petitioner had not established that a qualifying relationship exists between the U.S. entity and the beneficiary's foreign employer.

On appeal, counsel asserts that the director erred in denying the instant petition and submits additional evidence in support of the petitioner's claim to eligibility.

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.

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.

Pursuant to 8 C.F.R. § 214.2(l)(3)(v), 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.

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

Regulations at 8 C.F.R. § 214.2(l)(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 (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.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(I) state:

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

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(J) state:

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

Regulations at 8 C.F.R. § 214.2(l)(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.

Regulations 8 C.F.R. § 214.2(l)(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 reflects that the petitioner claimed on its Form I-129 petition that it is a branch of a foreign entity, located in Jamaica. The petitioner also submitted documentation indicating that the petitioner filed the Articles of Incorporation in the state of Florida on November 7, 2001.

On March 18, 2002 the director issued a request for additional evidence. Namely, she asked that the petitioner submit documented proof, such as stock certificates, establishing the ownership of the Jamaican and U.S.-based businesses.

The petitioner responded with a statement from the beneficiary in which he seemingly claimed that the foreign business is a sole proprietorship. He also indicated that the U.S. entity has not commenced doing business and therefore has not yet sold any of its stock even though it has filed the articles of incorporation.

The petitioner also submitted a letter from the owner of warehouse space that was promised to the petitioner contingent upon approval of the L-1A visa petition.

After reviewing the documentation submitted, the director denied the petition concluding that the petitioner failed to establish the existence of a qualifying relationship.

On appeal, the petitioner refutes the director's findings and submits an additional statement from the beneficiary in which he asserts that "[t]he original application stated clearly that the ownership control of both the US company and the foreign company is 50/50." Although the beneficiary's statement seemingly indicates that the same two individuals own both companies, he fails to provide any documentary proof to support his claim. Nor does he actually identify the two individuals. It is noted that 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).

In addition, the petitioner submitted two letters from individuals who reside in Jamaica and have dealt with the foreign entity and one letter from the foreign entity's bank. However, the director does not dispute the issue of the foreign entity's existence. The director's main concern is the petitioner's failure to establish the ownership of the foreign and U.S. entities, which effectively prevents CIS from determining that the two entities are commonly owned and controlled. The petitioner has failed to address this key issue. Consequently, there is no evidence to demonstrate that a qualifying relationship exists between the U.S. petitioner and the beneficiary's foreign employer. Therefore, the beneficiary is ineligible for L-1 visa classification as an intracompany transferee under section 101(a)(15)(L) of the Act.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that the beneficiary's position abroad was of a primarily managerial or executive nature. Further, 8 C.F.R. § 214.2(l)(3)(v)(A) require 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 it has secured sufficient physical premises to house the new office. In the instant case, the petitioner has submitted documentation indicating that in order to obtain sufficient physical premises the

petition must first be approved. Therefore, the petitioner had not secured premises to house its business at the time the petition had been filed. However, as the appeal will be dismissed on other grounds, these issues need not be addressed 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.