



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: WAC 02 175 50816 Office: CALIFORNIA SERVICE CENTER Date: **APR 27 2004**

IN RE: Petitioner: [Redacted]
Beneficiary [Redacted]

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:

[Redacted]

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**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.

[Handwritten signature]
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as a food packaging and distribution business. It seeks authorization to employ the beneficiary temporarily in the United States as a business development manager. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. business entity and the foreign business entity.

On appeal, counsel submits new evidence regarding the ownership of the company.

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 regulation at 8 C.F.R. § 214.2(l)(3) states 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.

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.

The issue in this proceeding is whether a qualifying relationship exists between the petitioning company and the claimed foreign company.

Bureau regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) define the term "qualifying organization" as follows:

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.

8 C.F.R. § 214.2(l)(1)(ii)(I) states:

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

8 C.F.R. § 214.2(l)(1)(ii)(J) states:

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

8 C.F.R. § 214.2(l)(1)(ii)(K) states:

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.

8 C.F.R. § 214.2(l)(1)(ii)(L) states, 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, RFM (U.S.) Corporation, located in Burlingame, California, stated in its initial petition, filed May 2, 2002, that it is a subsidiary of RFM Corporation, located in Manila, Philippines. The Form I-129 Supplement L describes the stock ownership and managerial control as:

RFM (U.S.) Corporation will be fully-owned by the parent company (RFM Corporation) Management and control will be effected through the appointment of the parent company President and CEO of the U.S. company's U.S. Country Representative of RFM Corporation.

On May 6, 2002, the director requested documentary evidence to establish that the U.S. entity is fully-owned by the entity abroad as claim[ed]. The director requested the following:

- The U.S. company's Notice of Transaction Pursuant to Corporation Code Section 2510 (f) showing the total offering amounts; the minutes of the organizational meeting of the U.S. company that lists all the shareholders and the number of shares owned;
- The U.S. company's stock ledger showing all stock certificates issued to the present date, including total shares of stock sold, names of shareholders, and purchase price.

On or about May 20, 2002, counsel for the petitioner responded to the request for evidence and stated:

[W]ith respect to the U.S. corporation's Notice of Transaction pursuant to Corporate Code Section 25102 (f) showing the total offering amounts, it is the present position of the corporation to hold in abeyance the filing of the said Notice pending resolution and consultation with the mother company on the most appropriate course of action.

Additionally, the beneficiary submitted minutes by the foreign entity of a meeting discussing the organization of the U.S. entity. The minutes included a listing of shareholders and shares allocated. Counsel further explained that stock certificates and the stock ledger are unavailable:

We wish to inform that a specimen certificate has not yet been presented and hence an approval of the form subsequent to an issuance of stock certificates and the corresponding stock ledger is not, as of the time being, available.

The director denied the petition stating "the Minutes of Meeting alone are insufficient evidence to determine whether a stockholder maintains ownership and control of corporate entity." The director found that there is insufficient evidence to demonstrate that the foreign entity has in fact paid for the ownership and control of the U.S. entity. The director concluded that because a qualifying relationship was not established at the time of filing the instant petition, the petitioner is not a qualifying organization.

On appeal, counsel provides new evidence of ownership and provides stock certificates and stock transfer ledger. The stock transfer date was listed as June 21, 2002 (more than a month after the initial petition was filed). The stock ledger stated that all stock was sold on June 21, 2002. Additionally, the petitioner submitted the money

transfer receipt/notice, dated June 26, 2001, "showing that [the foreign entity] transferred the amount of \$61,995.00 to [the U.S. entity]: \$45,000.00 as full payment to the 18,000 shares of stocks that it subscribed."

Counsel asserts "[t]herefore, such inability at the time to provide the requested documents should not be construed against the petitioner since the unavailability of the documents was a result of a valid business consideration." The AAO notes that failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Counsel asserts that there was a qualifying relationship even though the foreign entity purchased stock in the U.S. entity after the initial petition was denied. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). For this reason, the petition may not be approved at this time. Consequently, it must be concluded that the petitioner has failed to demonstrate a qualifying relationship with a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G), at the time of filing the instant petition.

The AAO notes that though this appeal must be dismissed, it is dismissed without prejudice. It appears that the petitioner may have obtained sufficient evidence for a future L-1 petition to fulfill the requirements of the regulations.

Based on the evidence provided, it cannot be found that a qualifying relationship existed between the U.S. petitioner and the overseas entity at the time the initial petition was filed. The appeal must therefore be dismissed.

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.