

U.S. Department of Homeland Security

Citizenship and Immigration Services

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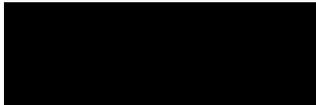
ADMINISTRATIVE APPEALS OFFICE
CIS AAO, 20 Mass, 3/F
425 Street N.W.
Washington, DC 20536



File: WAC 01 222 52378 Office: CALIFORNIA SERVICE CENTER Date:

FEB 02 2004

ON 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 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, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a music production corporation that seeks to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established a qualifying relationship with the foreign entity.

On appeal, the petitioner states that the services of the attorney previously retained by the petitioner have been terminated. The petitioner submits the minutes of a board meeting of the petitioning entity dated May 31, 2001. The petitioner further states that these minutes show that the two companies are affiliates because of their identical ownership. The petitioner notes that the minutes indicate that the beneficiary was instructed to retain an attorney versed in corporate securities to formalize the issuance of the shares of the petitioning entity promptly upon her return to the United States.

It is noted that the record contains a signed Form G-28, Notice of Entry of Appearance as Attorney or Representative dated May 8, 2001.

The regulations at 8 C.F.R. § 292.4 state, in pertinent part:

During proceedings before the Service, substitution may be permitted upon the written withdrawal of the attorney or representative of record, or upon notification of the new attorney or representative.

The petitioner's written withdrawal of the services of the attorney of record is acknowledged.

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 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 director determined that the petitioner had not established a qualifying L-1 relationship upon initial submission. On appeal, the petitioner explains that less than a month prior to the date this petition was filed, the person responsible for formalizing the issuance of the shares of the petitioning entity had yet to do so. To date, evidence that the ownership shares of the petitioning entity have been issued and to whom has not been forwarded for the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

On June 25, 2001, when the visa petition was initially filed, a qualifying relationship did not exist between the United States and the foreign entity. The petitioner must establish eligibility at the time of filing; See 8 C.F.R. § 103.2(b)(12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). For this reason, the petition may not be approved.

Furthermore, any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that the beneficiary will be employed in a qualifying managerial or executive capacity

in the United States. As the appeal will be dismissed on the grounds discussed, this issue 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.