

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
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Washington, D. C. 20536

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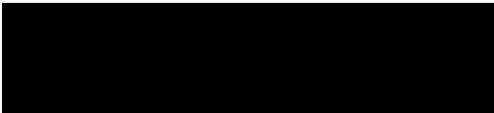


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Office: TEXAS SERVICE CENTER

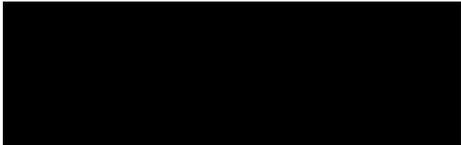
Date: **FEB 03 2004**

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:



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 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 claims to be a flooring sales and installation company. It seeks to employ the beneficiary temporarily in the United States as its sales manager. The director determined that the petitioner had failed to establish that a qualifying relationship existed between the foreign and U.S. entities.

On appeal, counsel contends that a qualifying relationship does exist between the foreign and U.S. entities.

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.

* * *

According to the evidence contained in the record, the petitioner claims to be a flooring sales and installation company. The petitioner claims to be a subsidiary of 27

Comercio de Veiculos Ltda., located in Brazil. The petitioner was incorporated in 2002, declares nine employees and reports \$51,789 in gross annual income. The petitioner seeks the beneficiary's services as sales manager for a period of three years, at a yearly salary of \$18,775.51.

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

The 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.

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

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

* * *

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

* * *

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.

* * *

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.

8 C.F.R. §§ 214.2(l)(1)(ii)(I), (J), (K), and (L).

In the instant matter, the petitioner claims to be a subsidiary of the foreign entity. As evidence of the U.S. entity's stock distribution, the petitioner submitted a Consent of Directors and Shareholders in Lieu of Organizational Meeting minutes, dated October 10, 2002, which states that the board of directors is authorized to distribute shares of stock in the U.S. entity. The stock distribution for the U.S. entity is listed as follows:

<u>NAME</u>	<u># OF SHARES</u>	<u>% OF OWNERSHIP</u>
Isaias P. Elias	500	40
Ivete Dos Santos Elias	500	40
Emerson C. Brambilla	250	20

The petitioner also submitted a copy of the U.S. company stock ledger (share register), dated October 10, 2002, that indicates that 500 shares of stock are to be issued to Ivete Dos Santos Elias via stock certificate number 002, and 250 shares of stock

are to be issued to Emerson C. Brambilla via stock certificate number 003. The petitioner submitted copies of stock certificates number 002 and 003, each of which is dated October 11, 2002. It is noted that the petition, in the instant case, was filed October 10, 2002.

The petitioner submitted a translated version of an Amendment to the Partnership Agreement, dated July 1, 1994, that transferred equal shares of the foreign company's stock to Isaias P. Elias and Ivete Dos Santos Elias. The stock distribution for the foreign entity is listed as follows:

<u>NAME</u>	<u># OF SHARES</u>	<u>% OF OWNERSHIP</u>
Isaias P. Elias	4,000	50
Ivete Dos Santos Elias	4,000	50

The director denied the petition after determining that the record did not establish that a qualifying relationship exists between the U.S. and foreign entities. The director stated that the evidence presented did not establish that a subsidiary relationship between the U.S. and foreign entities existed, in that the evidence did not show that one of the subject companies owns at least 50 percent of the other. The director further stated that an affiliate relationship did not exist between the U.S. and foreign entities, in that it had not been shown that there was a high degree of common ownership or management of the two companies.

On appeal, counsel asserts that the director's decision was incorrect, and that the evidence demonstrated Mr. and Mrs. Elias owned more than 50 percent of both the U.S. and foreign entities and, therefore, qualifying the U.S. entity as a subsidiary.

Counsel's assertions are not persuasive. 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 of Scientology International*, 19 I&N Dec. 593 (Comm. 1988); *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). 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. *Matter of Church of Scientology International, supra.*

Counsel's assertions, alone, 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, and operational agreements.

The AAO first turns to evidence of the foreign entity's ownership. There is insufficient documentary evidence to establish the individuals that own the foreign entity. In the instant case, the only evidence submitted by the petitioner in this regard was a translated version of an amendment to the foreign entity's partnership agreement, dated July 1, 1994. Therefore, Citizenship and Immigration Services (CIS) cannot determine this element of eligibility. Going on record without independent, qualifying documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, id.* Regarding the U.S. entity's ownership, the petitioner has submitted confusing evidence regarding this issue.

The petitioner submitted a consent document authorizing the issuance of shares of stock to Isias P. Elias (500 shares), Ivete Dos Santos Elias (500 shares), and Emerson C. Brambilla (250 shares). However, the U.S. entity stock ledger has only recorded the issuance of stock certificates to Ivete Dos Santos Elias (stock certificate 002) and Emerson C. Brambilla (stock certificate 003). There has been no evidence submitted to establish the existence of stock certificate number 001. The petitioner failed to submit any evidence to support its claim that Isaias P. Elias owns shares of the petitioner's stock.

It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA

1988). Here, the petitioner has not presented any credible documentary evidence that Isais P. Elias owns shares of stock in the U.S. entity, or that the foreign entity owns and controls the petitioner in whole, or in part. For this reason, the director's decision will not be disturbed.

Counsel infers that Mr. and Mrs. Elias collectively own 80 percent of the U.S. entity's stock and equal shares (50/50) of the foreign entities stock, therefore the familiar relationship establishes an organizational relationship. The AAO acknowledges that the stockholders in both entities apparently share a familial relationship; nevertheless, the evidence does not establish a qualifying relationship. Familiar relationships are not the standard used by the AAO in determining whether entities meet statutory and regulatory requirements as qualifying organizations. Familiar relationships can become unfamiliar, thus disturbing, and often times changing, the balance of ownership and control in any given company. Such a standard, if used, would be highly unreliable in discerning corporate ownership and control for purposes of intracompany classifications.

The stock ledger submitted by the petitioner only pertains to the issue of the petitioner's ownership; it does not clarify the foreign entity's ownership or the issue of control over the petitioner. Control may be *de jure* because an individual or entity owns 51 percent of a company's outstanding shares of stock, or it may be *de facto* because an individual or entity controls the voting of shares through partial ownership and by possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). Here, there has been no evidence submitted to establish that the foreign entity owns any of the petitioner's stock, in addition, there is no clear evidence of control by the foreign entity of the U.S. entity. Therefore, it has not been established that the U.S. entity is a subsidiary of the foreign entity.

Likewise, the petitioner has failed to establish that there is an affiliate relationship between the U.S. and foreign entities as the record does not show that both entities are owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity. With respect to the foreign entity, the petitioner has failed to submit copies of the corporate stock certificates, stock certificate ledger, stock certificate registry, corporate bylaws, minutes of relevant annual shareholder meetings, and purchase of

shares agreements to demonstrate the entities' qualifying relationship. With respect to the U.S. entity, the record demonstrates that it is not owned by the foreign entity. In addition, the evidence demonstrates that three people own unequal shares of stock in the U.S. entity, and that only two of those same individuals own equal shares in the foreign entity. In the instant case, the corporate stock certificate ledgers, stock certificate registries, corporate bylaws, and the minutes of relevant annual shareholder meetings must be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See *Matter of Siemens, supra*. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

Upon review of the entire record, the petitioner has not established that a parent-subsiidiary or affiliate relationship exists between the foreign and U.S. entities. Therefore, the appeal will be dismissed.

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary has been or will be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act. As the appeal will be dismissed, these issues 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.