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U.S. Citizenship  
and Immigration  
Services

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**JAN 05 2004**

FILE: SRC 02 202 51459 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary

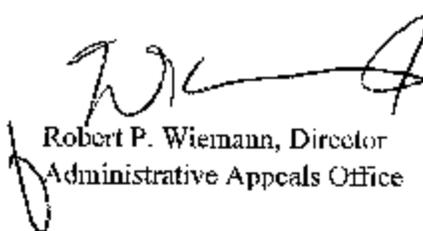
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(T) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(T)

ON BEHALF OF PETITIONER:

**PUBLIC COPY**

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.

  
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 The decision of the director will be withdrawn and the matter will be remanded for further action and consideration.

The petitioner is a corporation organized in South Carolina that acts as a representative of multinational automobile manufacturers. It seeks authorization to employ the beneficiary temporarily in the United States as its vice president. The director denied the petition based on the following conclusions: 1) the petitioner failed to meet the criteria of a qualifying organization; 2) the petitioner failed to establish that either it or its foreign counterpart are doing business; and 3) the petitioner failed to establish that the beneficiary has been or will be employed in a managerial or executive capacity.

On appeal, counsel submits a brief with additional documentation addressing each of the director's findings.

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.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States.

In regard to the issue of whether the U.S. and foreign entities have been and currently are doing business, the petitioner has submitted a number of invoices and the petitioner's tax returns for years 2000 and 2001. After a thorough review of these documents the AAO concludes that the director's conclusion regarding this issue was incorrect. The record contains sufficient evidence to suggest that both the foreign entity and the U.S.

entity have been and currently are engaged in the regular, systematic, and continuous provision of services. See 8 C.F.R. § 214.2(l)(1)(ii)(I).

The next issues in the instant matter are whether the beneficiary has been employed abroad and whether he will be employed by the petitioner in the United States in a managerial or executive capacity.

Although the director concluded that the petitioner failed to establish the beneficiary's past or future employment in a managerial or executive capacity, that determination was based on the incorrect conclusion that neither the foreign nor U.S. entities are currently doing business. Despite CIS's request for a description of the beneficiary's employment abroad, the director failed to examine the petitioner's response regarding this issue.

It is noted that a discussion of the beneficiary's duties, past and future, is germane in determining whether the beneficiary has been and would be employed in a managerial or executive capacity. Instead of addressing the pertinent facts that are relevant to the issue at hand, as well as the evidence submitted by the petitioner, the director chose to question the most trivial facts, such as the petitioner's change of address. Contrary to the director's suspicions, the fact that the petitioner moved from one office space to another is not unusual, and should not be the basis for doubting the petitioner's credibility. The director also questioned the authenticity of the marriage of the petitioner's claimed owner and his spouse and whether the couple could establish a business in Germany. Not only was the director's reasoning faulty and without basis in the law, but the authenticity of the marriage is entirely irrelevant in determining the petitioner's eligibility for the immigration benefit sought. In the future, the director should focus on applying the statute and regulations to the relevant facts presented by the record of proceedings. For this reason, the director's decision relating to the beneficiary's managerial duties will be withdrawn. The AAO concludes that the petitioner presented sufficient evidence to establish that the beneficiary's duties have been and will be in a primarily managerial or executive capacity.

The final issue in this proceeding is whether the petitioner has established that it has a qualifying relationship with a foreign entity.

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.

The regulations at 8 C.F.R. § 214.2(D)(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(D)(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(D)(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(D)(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.

In her decision, the director focused on a change in the ownership of Spitznagel GmbH, the claimed German parent company, and a discrepancy in section one of the petition regarding the ownership of the U.S. petitioner. First, the ownership of Spitznagel GmbH is not germane to the claimed relationship. The petitioner claims to be the wholly-owned subsidiary of the German company, so it is the ownership of the U.S. petitioner that is critical to determining whether a qualifying relationship exists. As the director's discussion of the German company's ownership is not relevant to the claimed qualifying relationship, the director's decision will be withdrawn as it relates to this issue. Furthermore, the petitioner has submitted sufficient documentation to clarify the discrepancy in section one of the petition.

Although the petitioner resolved the inconsistency created by the acknowledged typographical error in section one of the petition, a thorough review of the petitioner's tax returns reveals another inconsistency. Namely, the petitioner has maintained the claim that it is wholly owned by the foreign entity. In support of that claim the petitioner has submitted a stock certificate indicating that the foreign entity owns 100 shares of the U.S. entity's stock. The petitioner also submitted a "Written Consent of the Directors" indicating that a total of 100 shares of its common stock were issued and that those shares were issued to the foreign entity. However, Schedule E of the petitioner's tax returns for years 2000 and 2001 both indicate that Walter F. Spitznagel owns 100 percent of the petitioner's stock. This information directly contradicts the petitioner's claim regarding its ownership, as well as Part II of Form 5472 of the petitioner's tax returns, neither of which suggest that an individual has any direct ownership of the petitioner's stock. The director noted a discrepancy

in Schedule F, but incorrectly attributed the ownership to the petitioning corporation. Therefore, this matter will be remanded so that the director can examine this issue further and provide the petitioner with the opportunity to submit an explanation and any documentation necessary to resolve the issue of the petitioner's ownership.

Accordingly, the director shall examine the record in its entirety and request any additional evidence that is pertinent to a determination regarding the issue of the claimed relationship between the petitioner and the overseas entity.

For these reasons, the decision of the director will be withdrawn and the petition will be remanded for further action and consideration. The director must address the issue as discussed in this decision. The director shall then render a new decision based upon her findings, which, if adverse to the petitioner, shall be certified to the AAO for review in an expeditious manner.

**ORDER:** The decision of the director is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.