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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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MAR 17 2004

FILE: WAC 00 112 54274 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

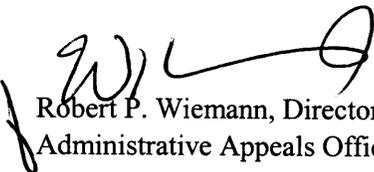
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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, 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 a horse-trading enterprise. It seeks authorization to employ the beneficiary temporarily in the United States as its president. The director determined 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 refutes the director's findings and asserts that the director abused her discretion in denying the petition.

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(l)(3)(v) state 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.

At issue in this proceeding is whether a qualifying relationship exists between the U.S. petitioner and 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(l)(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(l)(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(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.

The regulations at 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 on April 14, 2000 the director issued a request for additional evidence. The petitioner was specifically asked to submit original wire transfers from the parent company to establish that it actually paid for its shares in the petitioning entity.

The petitioner's response included a copy of the "Minutes of Special Meeting of the Board of Directors." The minutes included a discussion of the foreign entity's intended ownership of 1,000 shares of the petitioner's stock for a total cash value of \$25,000. The petitioner also provided copies of several fund transfer confirmation receipts. However, as previously pointed out by the director, the funds were all transferred into the beneficiary's, rather than the petitioner's, bank accounts. The petitioner has failed to submit actual evidence to support counsel's claim that the foreign entity owns 100% of its issued stock. 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). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

After reviewing the documentation submitted, the director denied the petition concluding that the petitioner failed to establish that the foreign entity paid for the petitioner's shares of stock.

On appeal, counsel asserts that the beneficiary's assistance was used in the fund transfers because the beneficiary was present in the United States. However, the beneficiary could have acted in his capacity as the petitioner's president in assisting with the fund transfers and getting them directly into the petitioner's own bank account. Counsel has shown no practical reason why the petitioner's money should first have to go through the beneficiary's bank account prior to being passed on to the petitioner. Furthermore, the record does not contain documentation to indicate that the money was actually passed on to the petitioner, as counsel claims was the original intent.

Counsel also states that the director abused her discretion in failing to distinguish between authorized shares and issued shares. However, counsel mistakenly bases this argument on a quote that the director cited from a precedent decision. There is no indication, based on the director's wording, that the director concluded that the foreign entity owns "a relatively small concentration of stock, perhaps 10%" Those words were clearly part of another decision and were not meant to represent the director's conclusion in the instant case.

On review, the petitioner failed to submit sufficient evidence to demonstrate that the foreign employer paid for ownership of the petitioning entity. Therefore, the petitioner has not established that it has a qualifying relationship with a foreign entity. Consequently, the beneficiary is ineligible for L-1 visa classification as an intracompany transferee under section 101(a)(15)(L) of the Immigration and Nationality Act.

Beyond the decision of the director, the petitioner failed to provide sufficient evidence to establish that the beneficiary has been and would be employed in a managerial or executive capacity. The description of the beneficiary's duties abroad fails to indicate what the beneficiary has been doing on a daily basis and does not indicate how the beneficiary's tasks can be classified as either managerial or executive. The petitioner also failed to provide the AAO with a detailed description of the beneficiary's proposed duties in the United States. However, as the appeal will be dismissed on other grounds, these issues need not be further addressed.

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.