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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: SRC 03 034 51544 Office: TEXAS SERVICE CENTER Date:

MAY 06 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:

Self-Represented

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, 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 is a forwarding company seeking to employ the beneficiary temporarily in the United States as its general manager. 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 disputes the director's findings and asserts that a qualifying relationship exists between the petitioner and a foreign entity.

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.

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.

In the petition the petitioner indicated that it is a subsidiary of a foreign company. However, the stock certificates submitted in support of the petition indicate that Humberto Chavez Maldonado directly owns 90% of the petitioner's stock, while Lilia Chavez Maldonado owns the remaining 10% of the petitioner's stock. It is noted that the evidence submitted contradicts the petitioner's claim that it is a subsidiary of a foreign entity, as its stock is directly owned by individuals rather than by a firm, corporation, or other legal entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K).

The record reflects that on November 27, 2002 the director instructed the petitioner to submit additional evidence to establish that it has a qualifying relationship with a foreign entity. The petitioner responded with a letter claiming that it is an affiliate of a Mexican corporation, rather than its subsidiary as previously claimed. Regarding the ownership of the foreign entity, the petitioner stated that Humber Chavez Maldonado owns 48% of the corporate stock, his sister, Lilia Chavez Maldonado owns 40% of the corporate stock, and

Victor Maldonado owns 12% of the corporate stock. The petitioner claims that the Mexican and U.S. entities are affiliated because Humberto and Lilia Maldonado, together, own and control a majority of both entities.

After reviewing the documentation submitted, the director denied the petition concluding that the petitioner failed to establish the existence of a qualifying relationship.

On appeal, the petitioner claims that it has submitted documentation to amend the original petition, which mistakenly claims the petitioner as the Mexican company's subsidiary. The petitioner also repeats the ownership breakdown of its own stock as well as the stock of its claimed foreign affiliate claiming that both entities are family owned with the same two family members controlling both corporations.

Contrary to the petitioner's claim, the petitioner and the Mexican company that is the claimed affiliate are not similarly controlled. While the petitioning entity is controlled by Humberto Maldonado, by virtue of his ownership of 90% of the company's shares, the foreign entity's control is uncertain and depends entirely on the voting of each of the three shareholders' vote. Even though Humberto Maldonado owns more shares than either of the other two shareholders, together those two shareholders can form a voting majority and effectively control the foreign entity. As such, the AAO cannot conclude that the petitioner and the foreign entity are similarly owned and controlled.

Furthermore, as general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also 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 Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The regulation and case law confirm that 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 immigrant visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, *supra*; *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, 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 Scientology International*, *supra* at 595.

On review, there is no evidence to demonstrate that a qualifying relationship exists between the U.S. petitioner and the beneficiary's foreign employer. Therefore, the beneficiary is ineligible for L-1 visa classification as an intracompany transferee under section 101(a)(15)(L) of the Act.

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 in section 101(a)(44) of the Act.

The petitioner has submitted a vague and broadly phrased position description that paraphrases the statutory definition of managerial capacity at section 101(a)(44)(A) of the Act and furthermore fails to reveal the specifics of what the beneficiary has done and will do on a daily basis. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990). Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Id.*; *see also, Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). For this additional reason the petition must be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

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.