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Washington, DC 20529



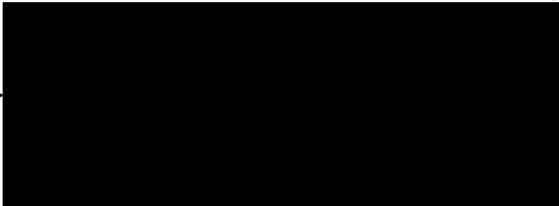
U.S. Citizenship
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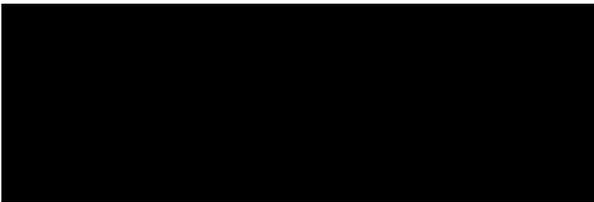
File: SRC 02 042 51053 Office: TEXAS SERVICE CENTER Date:

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:



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 nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a new limited liability company that plans to engage in investments in the United States. The first investment is in a convenience store and automobile filling station being built in Grayson, Georgia. It seeks to employ the beneficiary in the United States as its president and CEO. The director found that the petitioner had not established the size of the U.S. investment and the financial ability of the foreign entity to support the new office. The director noted that the beneficiary is identified as the sole member of Zarintaj by the sales agreement in which Zarintaj purchases a controlling interest in a convenience store. The director then determined that the petitioner had not established that a qualifying relationship exists between the United States company and a qualifying foreign entity. Additionally, the director found that the petitioner had not established that sufficient physical premises had been secured and had not established that the foreign company was doing business.

On appeal, counsel submits a brief.

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 petitioner qualifies under the new office definition in 8 C.F.R. § 214.2(l)(1)(ii) that states in pertinent part that:

(F) *New office* means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

The regulations at 8 C.F.R. § 214.2(l)(3)(v) state that if a 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 (I)(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.

Based on the record and the information provided on appeal, it is determined that the petitioner had secured sufficient physical premises and established that the foreign company was doing business on November 15, 2001, the date the visa petition was filed.

However, on appeal, the petitioner has not addressed the issue of the financial ability of the foreign entity to support the new office that was raised by the director in her decision. Therefore, the petition may not be approved for this reason.

The second issue to be addressed in this proceeding is whether the petitioner and the foreign entity are qualifying organizations.

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 (I)(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)(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 petitioner's claimed affiliate abroad, Laxmi Tyre & Auto Services is a partnership which is held by two individuals, Mr. Nizar Ali Chagani and Nadir Shah Chagani who each own 50% of the firm.

Counsel indicates that Zirintaj, LLC is owned by the same two individuals and that their membership interest in the firm is 50% each. The director noted in her decision that the beneficiary is identified as the sole member of Zarintaj by the sales agreement in which Zarintaj purchases a controlling interest in a convenience store. Counsel emphasizes that in the preliminary recitals of that sales agreement cited by the director in his order, the beneficiary is described as the "sole member" of ZIRINTAJ, LLC and that this was an error on the part of the seller. However, counsel has not submitted evidence to substantiate this assertion. The sales agreement dated March 25, 2002 clearly shows that the beneficiary represented himself as the sole member of Zarintaj in the transaction. It is noted that 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). 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).

There is other contradictory information on record concerning the ownership and control of the petitioning entity. The business plan for "Zarin Taj LLC" dated November 2001 submitted for the record contains the following statement in the description of the company section of the executive summary. "Mr. Ameen Chagani, President of Zarin Taj LLC is the son of Nizar Ali Chagani, who holds 100% of the US Corporation's stock." Again, this statement is at variance with counsel's assertion that Zirintaj, LLC is owned by Mr. Nizar Ali Chagani and Mr. Nadir Shah Chagani and that their membership interest in the firm is 50% each. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Finally, the petitioner has submitted contradictory evidence regarding the source and the amount of the initial U.S. investment. In a request for evidence, the director instructed the petitioner to submit evidence of the funding or capitalization of the U.S. company. In response the petitioner claimed that the U.S. petitioner had opened a business checking account with an initial balance of \$40,117.93. In support of this claim, the petitioner submitted copies of two wire transfers from the Hong Kong accounts of Yousuf Sahib Mohamed

Uzair in the amounts of \$14,980.00 and \$9,980.00, that were directed to the personal account of the beneficiary. The petitioner submitted a third wire transfer in the amount of \$14,990 that was sent by a party identified as "RAJBAD," located in the United Arab Emirates. This evidence undermines the petitioner's claims for two reasons: First, the funds were directed to the personal accounts of the beneficiary and not the petitioning company. Accordingly this evidence will not suffice to show the level of investment in the U.S. company, as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2). Furthermore, it is noted that the funds did not originate from the claimed affiliate or the claimed owners, but instead were initiated by two different unidentified parties. Therefore, the evidence contradicts the claimed ownership of the U.S. petitioner.

Despite counsel's arguments, the record does not demonstrate that the U.S. and foreign entities are owned and controlled by the same parent or individual, or that the two companies are owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity. Thus, a qualifying subsidiary or affiliate relationship cannot be shown to exist between the U.S. and foreign entities. For this additional reason, the petition may not be approved.

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. For this additional reason, this petition may not be approved.

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.