



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: SRC 02 180 50499 Office: TEXAS SERVICE CENTER Date: **OCT 01 2004**

IN RE: Petitioner:  
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:

[Redacted]

**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 case will be remanded for further action. In the event of an adverse decision, the case shall be certified to the AAO for review.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Florida. The petitioner states that it is a subsidiary of Asesorias y Servicios Empresariales, located in Colombia. The beneficiary was initially granted a one-year period of stay to assist in the opening of a new office in the United States. The petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner failed to establish that it is a qualifying entity, which has control over its business operation.

On appeal, counsel disputes the director's findings and submits a brief in support of his assertions.

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)(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 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.*, 19 I&N Dec. 362 (BIA 1986)(in nonimmigrant visa proceedings); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982)(in nonimmigrant visa proceedings). 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* at 595.

The director found that the franchise agreement entered into by the petitioner with another company essentially precludes the petitioner from being able to maintain control over its own business. However, upon reviewing the franchise agreement in question, the AAO finds that the petitioner has not relinquished control over the corporate entity as a result of having entered into a franchise relationship with Coverall North America, Inc. There is no evidence to suggest that the petitioner's distribution of stock, election of board members, or general decision-making power has been effected in any way. Therefore, the director's determination that the petitioner is not a qualifying entity will be withdrawn.

However, a review of the petitioner's record of proceeding indicates that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity. Although the director addressed this issue in the case of the petitioner's two other beneficiaries (with petition receipt numbers SRC0218250754 and SRC0218050532), the same was not done in the instant case. Accordingly, this case will be remanded so that the director can review the record of proceeding and fully address the issue of whether the petitioner has successfully established that the beneficiary would be employed in a qualifying managerial or executive capacity.

**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.