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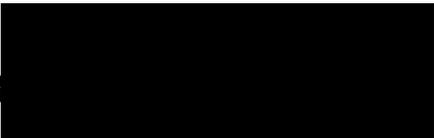
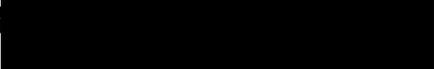


U.S. Citizenship  
and Immigration  
Services



*[Handwritten signature]*

File: LIN 03 058 51925 Office: NEBRASKA SERVICE CENTER Date: **OCT 01 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)

IN 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.

*[Handwritten signature]*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner claims it is a limited liability company organized in the State of Ohio in September 2001. It claims to own an interest in a franchise for Obee's Soup Salad and Subs and to participate in a general trading business. It seeks to extend the temporary employment of the beneficiary as general manager. Accordingly, the petitioner endeavors to classify the beneficiary as a 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 claims that Enesel Industries (Pvt.) Ltd., located in Karachi, Pakistan owns a 51 percent interest of its shares.

The director denied the petition concluding that the record did not contain sufficient evidence to establish a qualifying business relationship with the foreign entity.

On appeal, counsel for the petitioner asserts that the petitioner's relationship with the foreign entity has not changed since the approval of the initial petition.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further 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; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, that involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of position held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The issue in this proceeding is whether a qualifying relationship exists between the foreign and U.S. entities.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term “qualifying organization” and related terms as follows:

(G) *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.

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *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.

(L) *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 present matter, the petitioner claims it is a limited liability company. On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner indicated that [REDACTED] owned a 51 percent interest in the petitioner and Gurinder Preet Singh owned a 49 percent interest in the petitioner. The petitioner also submitted the foreign entity's "Accounts For The Year Ended September 30, 2001." In an undated "Director's Report" attached to the accounts document, a "director" indicated that the foreign company had decided to send the beneficiary to the United States "to establish a branch to expand its activities," and "[i]n order to support the business activities in the U.S., it is decided to budget U.S. \$300,000 in support of [the beneficiary] to start the business."

The petitioner in a letter attached to the petition stated that it had the responsibility to open a number of Obee's stores pursuant to an [REDACTED] agreement and that the beneficiary had started a division of [REDACTED] (the petitioner) to be involved in general trading. The petitioner submitted pages 3 and 9 of a document referencing "Obee's sub shops" and an Internal Revenue Service (IRS) Forms 941, Employer's Quarterly Federal Tax Return filed on behalf of [REDACTED] for the first three quarters of 2002.

On December 16, 2002, the director requested "evidence to establish that the petitioning entity will continue to maintain a qualifying organization in another country, directly or through a parent, branch, affiliate, or subsidiary, during the beneficiary's stay in the United States which will do business as an employer."

In response, the petitioner submitted a letter from Enesel Industries (Pvt.) Ltd. The December 17, 2002 letter was written on the foreign entity's letterhead and signed by the foreign entity's chairman. The chairman stated that the foreign entity continued to do business and "certified" that the foreign entity owned 51 percent shares of an [REDACTED] identified as [REDACTED] and that the beneficiary was employed by Halva Ltd.

The director determined that the relationship between the petitioner, [REDACTED]; the foreign entity, [REDACTED], and the U.S. entity/franchise of [REDACTED] Soup Salad and Subs, was unclear. The director

observed that the record lacked documentation regarding the actual ownership of Obee's Soup Salad and Subs and that the franchise organization was not a qualifying organization for the purposes of the L regulations. The director also observed that the petitioner appeared to act as a receiving agent for the foreign entity on a limited basis. The director concluded that as the Obee organization is a franchise and Halva Ltd appeared to act as an agent for the foreign entity, the petition failed to establish that the petitioner had a business relationship to satisfy the requirements set forth by the L regulations.

On appeal, counsel for the petitioner contends that the petitioner engages in general trading, holds two franchises of [REDACTED] and operates as an area developer for new [REDACTED] franchises in an assigned territory. Counsel claims that the petitioner is a wholly owned subsidiary of the foreign entity.

Counsel submits an "Area Developer" corporate transfer form dated September 4, 2001. The transfer form is between the beneficiary and [REDACTED] salad subs [REDACTED] and [REDACTED] (Franchisor). The transfer form indicates that the franchisee/s has formed a corporation, [REDACTED] to continue operation as an [REDACTED]. The franchisor states its approval of the assignment of the franchisee's interest in the "Area Developer" agreement; provided that the franchisee maintains direct ownership of not less than fifty-one percent of each class of the corporate stock issued. Counsel also submits a copy of the petitioner's September 7, 2001 operating agreement listing the petitioner's members as Enesel Industries (Pvt.) Ltd owning 51 percent and Gurinder Preet Singh owning 49 percent.

Counsel's evidence on appeal is not persuasive. The record does not contain documentary evidence that the petitioner is a legitimate Ohio limited liability company. The petitioner has not provided any evidence in this proceeding that it filed its purported organization as a limited liability company with the State of Ohio. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, the petitioner has provided limited, less probative evidence regarding its actual ownership and control. On the issue of the petitioner's ownership and control, the record before the director consisted of a statement on the Form I-129, an undefined director's report authorizing the beneficiary, not a separate entity, to engage in business, and a certificate signed by the foreign entity's director indicating that the foreign entity owned 51 percent of the petitioner. The record contains no documentation substantiating the claims made on the Form I-129 and the foreign entity's "certificate."

The record on appeal likewise contains little probative evidence substantiating that the foreign entity owns and controls a majority interest in the petitioner. Counsel's claim that the petitioner is a wholly owned subsidiary contradicts the operating agreement and "certificate" submitted by the foreign entity indicating that the foreign entity owns 51 percent of the petitioner. 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). Further, the September 4, 2001 "Area Developer" corporate transfer form indicates that the beneficiary and a partner originally owned 100 percent of the petitioner's franchise asset. The record does not contain documentation actually transferring a 49 percent interest in the franchise to the petitioner as a purported separate and autonomous entity. Even if the corporate transfer form constituted an actual transfer of interest, the petitioner would own 49 percent of an asset controlled by the beneficiary and his partner. This attempt to transfer an interest in an asset owned by the beneficiary and his partner undermines the petitioner's viability as an entity other than as a "shell company" that does not conduct business in a regular and continuous manner and primarily serves as a method to transfer the beneficiary to the United States. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The record does not establish that the beneficiary entered the United States temporarily to continue rendering his services to the same employer or a subsidiary or affiliate thereof.

Further, the director in this matter implied that the petitioner was not conducting a general trading business when he determined that the petitioner was acting as an agent for the foreign entity. The director did not specifically state that an entity acting as an agent or office of a foreign entity and not regularly, systematically, and continuously providing goods or services is not doing business as defined by the regulations; however, the director properly cited 8 C.F.R. § 214.2(l)(1)(ii)(H) that states: "Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad."

The director referenced four invoices dated in November and December 2002 from the foreign entity to the petitioner in care of the beneficiary that are contained in the record and determined that the foreign entity was shipping merchandise to the petitioner as a receiving agent. On appeal counsel for the petitioner asserts that the petitioner is doing nothing different than any trading company that imports merchandise to sell in the United States. However, the minimal documentation of the petitioner's general trading business raises the issue of whether the petitioner is doing business in a regular, systematic, and continuous fashion. Furthermore, the invoices are dated within two months of filing the petition. The petitioner has not established it was conducting its claimed general trading business for the entire year prior to filing the petition to extend the beneficiary's status. *See* 8 C.F.R. § 214.2(l)(14)(ii)(B).

The record does not substantiate counsel's claim that the petitioner engages in general trading, holds two franchises of Obee's Franchise Systems, Inc., and operates as an area developer for new Obee's restaurant franchises in an assigned territory. The record does not include sufficient evidence to determine that the petitioner is engaged in the regular, systematic, and continuous general trading business. Moreover, the record demonstrates that it is the beneficiary and his partner that own and operate the Obee's franchises and act as the franchise area developer.

Beyond the decision of the director, the record does not establish that the beneficiary's assignment for the petitioner is in a primarily managerial or executive capacity. The beneficiary apparently is the petitioner's sole employee. The beneficiary states that as general manager of the Obee's Store, among other duties, he monitors inventory, daily food preparation, and cleaning; determines pricing, identifies markets, and develops advertising materials; and, participates in ensuring timely service to customers, trains employees, and hires and fires employees.<sup>1</sup> The beneficiary states that as the chief executive officer of the petitioner's general trading division, he prices products, establishes manufacturer relationships, identifies markets, develops ways to sell imported merchandise, performs market research, establishes standard shipping expenses, locates dependable freight forwarders, monitors shipments, and handles customs documents. The beneficiary's duties for both the franchise and the general trading business are duties associated with providing the petitioner's product and services. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). The petitioner has not established that the beneficiary's assignment is primarily managerial or executive.

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.

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<sup>1</sup> The employees the beneficiary is referring to apparently are employed by the Obee's franchise which is majority owned by the beneficiary and his partner, not the petitioner. The record contains no independent documentation showing that the petitioner employs anyone other than the beneficiary.