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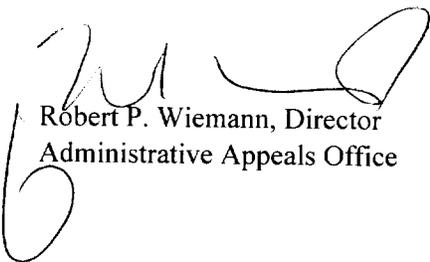
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

IN 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, California 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 seeks to employ the beneficiary temporarily in the United States 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 U.S. petitioner is a corporation organized in the State of California that is engaged in the wholesale of industrial supplies. The petitioner claims that it is the subsidiary of Juteng Real Estate Development, located in Tainjin, China, and seeks to employ the beneficiary as its president.

The director denied the petition concluding that the beneficiary did not possess one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner claims that the director's finding was erroneous, and asserts that the fact that the beneficiary was employed by a qualifying organization, without regard to the location of his employment, is the key factor to be examined in determining eligibility in this matter. In support of this assertion, the petitioner submits additional evidence.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. 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) 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 primary issue in this matter is whether the beneficiary 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, as required under 8 C.F.R. § 214.2(l)(3)(iii).

With the filing of the initial petition, counsel alleged that the beneficiary had worked continually for the foreign entity from January 1, 1999 until the present without interruptions. The director, however, noted that the beneficiary was in H-1B status from December 20, 1996 to November 5, 1999, and thereafter was in H-4 status from April 14, 2000 to the present.¹ In an attempt to clarify this discrepancy, the director issued a request for evidence on October 30, 2002. Specifically, the director requested clarification of these inconsistencies, and required the petitioner to submit payroll records verifying the beneficiary's employment with the foreign entity abroad.

In response to the director's request, counsel for the petitioner submitted a letter from the U.S. entity's vice president, dated January 16, 2003. In this letter, the vice president clarified the beneficiary's previous years of employment as follows:

On October 8, 1998, the beneficiary . . . became a major investor and a director of the foreign parent company while he was still working in the United States in H-1B status. On December 10, 1998, he was appointed Vice President by the foreign parent company to conduct market researches for its investment projects in the United States. This employment required [the beneficiary] to remain in the United States so that he could use this advantage to fulfill the special job assignments of the parent company.

[The beneficiary] has maintained his legal non-immigrant status in the United States while working for the foreign parent company. From 01/01/1999 to 11/05/1999, he worked part time for the foreign parent company while keeping his job as a financial analyst at Worldsys in New York. After his H-1B status expired, he changed his non-immigrant status to H-4 and continued to work full time for the foreign parent company.

On March 7, 2003, the director denied the petition. The director determined that the evidence submitted did not establish that the beneficiary had actually worked for a continuous year, out of the three years preceding the filing of the petition, for a qualifying organization *abroad* as required by the regulations. On April 1, 2003, counsel for the petitioner appealed the director's decision, asserting that "the place or country where the beneficiary has worked is not the governing factor in determining whether the actual employment relationship exists." Counsel also alleges that the AAO should consider such additional issues as whether the beneficiary

¹ It is noted for the record that the beneficiary's stay in the United States as an H-1B and H-4 count towards the beneficiary's maximum allowable period of stay of seven years. 8 C.F.R. § 214.2(l)(12).

was paid and treated as a full time employee of the foreign entity and whether he was supervised by managers or executives of the foreign employer.

Upon review, counsel's assertions are not persuasive. The language set forth in the statute and 8 C.F.R. § 214.2(l)(3)(iii) clearly requires the beneficiary to have one continuous year of full time employment *abroad* with a qualifying organization. The fact that the beneficiary may have been on the payroll of the foreign entity while working in the United States does not satisfy the regulatory requirements.

Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int'l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). The plain meaning of the statutory language should control except in rare cases in which a literal application of the statute will produce a result demonstrably at odds with the intent of its drafters, in which case it is the intention of the legislators, rather than the strict language, that controls. *Samuels, Kramer & Co. v. CIR*, 930 F.2d 975 (2d Cir.), *cert. denied*, 112 S. Ct. 416 (1991).

In this case, the ordinary meaning of the statutory language is clear.² The phrase “one continuous year of full time employment abroad” is straightforward, yet counsel alleges, without support, that the director erred by not examining additional factors such as payroll records showing that the beneficiary was being paid by the foreign entity while working in the United States. Counsel insists that the director erred by strictly interpreting the language of the regulation, yet fails to provide any independent evidence support his contention. 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).

Accordingly, the petitioner has not established that the beneficiary was employed in a full time position abroad for at least one continuous year out of the three years preceding the filing of the petition, as required by 8 C.F.R. § 214.2(l)(3).

Beyond the decision of the director, the AAO notes some additional issues not previously addressed by the director. First, the record is not persuasive in demonstrating that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity as defined at section 101(a)(44) of the Act. Specifically, the organizational chart provided states that the beneficiary would act as the president of the entity, but would also operate the accounting department. These additional implied duties are not primarily

² We are expected to give the words used their ordinary meaning. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). We are to construe the language in question in harmony with the thrust of related provisions and with the statute as a whole. *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996).

managerial or executive in nature, and thereby preclude a finding that the beneficiary's position would be solely executive or managerial as contemplated by the regulations. In addition, there is no evidence to establish that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad on completion of the temporary assignment in the United States pursuant to 8 C.F.R. § 214.2(l)(3)(vii). Since the beneficiary has not held a position *abroad* with the foreign entity, there is insufficient evidence to support a finding that the beneficiary will return to a position in China when his appointment in the United States expires. As the appeal will be dismissed, these issues need not be examined further.

Second, the record contains numerous inconsistencies with regard to the ownership of the U.S. entity. 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 visa classification. 8 C.F.R. § 214.2(l)(3)(i); *see also 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); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). The documentary evidence in the record suggests that the majority owner of the U.S. entity is the foreign entity, with 1000 of the 1300 shares of stock issued to date. The record further reflects that the beneficiary and the U.S. entity's vice president each own 150 shares of the outstanding stock. However, the U.S. entity's Form 1120, U.S. Corporate Tax Return, for the year 2001 indicates on Schedule K, Line 5, that the beneficiary owns 100% of the U.S. entity. In addition, although the shares of stock are listed at a rate of \$100.00 per share, Schedule L of the Form 1120 indicates that a capital contribution in the amount of \$1,000.00 has been rendered. 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). Since the petitioner's relationship to the foreign entity are critical to eligibility, the petition must be denied for this reason, as well.

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.