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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



FILE: SRC 03 082 53021 Office: TEXAS SERVICE CENTER Date: OCT 15 2014

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

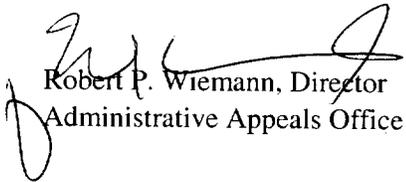
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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

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prevent unauthorized disclosure  
invasion of privacy

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

The petitioner was established in 2000 and claims to be in the business of exporting bananas and banana flour. The petitioner claims to be an affiliate of Exportadora & Importadora Pavar S.A., located in Guayaquil, Ecuador. It claims two employees. The petitioner seeks authorization to employ the beneficiary in the United States as commercial and marketing director of its new office for one year, at an annual salary of \$80,000.00.

The director determined that the petitioner had not submitted sufficient evidence to establish that an affiliate relationship existed between the U.S. and foreign entities.

On appeal, the petitioner disagrees with the director and asserts that the evidence of record is sufficient to establish that an affiliate relationship exists between the U.S. and foreign entities.

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)(1)(ii) states, in part:

*Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary 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 (1)(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 with 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 serves 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(1)(3)(v) states that if the 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 (1)(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.

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

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:

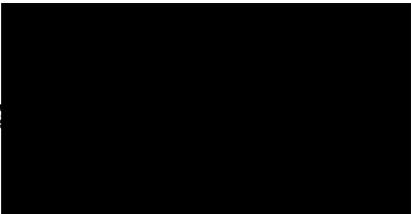
- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States 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) define, in pertinent part, "parent," "branch," "subsidiary," and "affiliate" as:

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operation 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 instant matter, the petitioner claims to be an affiliate of the foreign entity. The petitioner submitted a copy of the U.S. entity's Articles of Incorporation, which show that the entity is authorized to issue a total of 100 shares of stock at a par value of \$1.00 each. The petitioner also submitted copies of U.S. entity stock certificates 00 through 04. The petitioner submitted a copy of the foreign entity's Certificate of Incorporation, which demonstrated the entity's authority to issue a total of 800 shares of company stock at a par value of \$1.00. The initial subscribers to the U.S. and foreign entities capital stock and the number of shares subscribed are as follows:

PAVARA USA CORP

<u>NAME</u>	<u># OF SHARES</u>
	35
	35
	10
	10
	10

EXPORTADORA & IMPORTADORA

<u>NAME</u>	<u># OF SHARES</u>
	

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The director denied the petition after determining that the evidence submitted was insufficient to demonstrate that an affiliate relationship existed between the U.S. and foreign entities. The director stated that the evidence failed to show that the same group of individuals owned the two entities, with each individual owning and controlling approximately the same share or proportion of each entity.

On appeal, the petitioner disagrees with the director's decision and asserts that the recent redistribution of U.S. company stock shares demonstrates the existence of an affiliate relationship between the U.S. and foreign entities. The petitioner submits U.S. stock certificates 05 through 08 with an issue date of May 15, 2003.

The evidence fails to establish the existence of a qualifying relationship between the U.S. and foreign entity. Although the petitioner asserts that there has been a redistribution of U.S. company stock shares and submits copies of stock certificates to substantiate its claim, this evidence was not in existence at the time the initial petition was filed. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Even if the new evidence were to be taken into consideration on appeal, it would still not demonstrate the existence of an affiliate relationship between the U.S. and foreign entities. There has been no independent documentary evidence submitted to show any change in the distribution of shares.

In the instant matter, the evidence does not demonstrate that an affiliate relationship exists between the U.S. and foreign entities as the record does not show that both entities are owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity. The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between U.S. and foreign entities for purposes of a nonimmigrant visa petition. *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm. 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988) (in immigrant visa proceedings). 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.* The record

demonstrates that at the time the petition was filed [REDACTED] both owned shares of stock in the U.S. and foreign entities. However, the evidence also demonstrates that the third owner of stock in the foreign entity owns no stock in the U.S. entity. The evidence also shows that three individuals own stock in the U.S. entity but own no stock in the foreign entity. Overall, the record shows an unequal distribution of stock among individuals owning U.S. company and foreign entity stock. Consequently, the appeal will be dismissed.

Beyond the decision of the director, the record contains insufficient evidence to establish that the overseas company employed the beneficiary in a primarily managerial or executive capacity for one continuous year within three years preceding the filing of the petition. The petitioner submitted copies of the beneficiary's pay stubs and a payroll record from the foreign entity, an organizational chart depicting the foreign entity's hierarchal structure, and the U.S. entity's business plan. Although this evidence demonstrates that the beneficiary may have been employed by the foreign entity, it fails to show that he was so employed primarily in a managerial or executive capacity. In addition, the record is not persuasive in demonstrating that the beneficiary will be employed by the U.S. entity primarily in a managerial or executive capacity as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), or that the petitioner would support such a position within one year of approval of the petition. There has been insufficient evidence submitted by the petitioner to demonstrate the proposed nature of the U.S. entity's office, the size of its investment, and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in accordance with 8 C.F.R. § 214.2(l)(3)(v)(C)(1) and (2). The one page business plan submitted by the petitioner failed to adequately demonstrate the U.S. entity's financial capabilities or employment projections. For these additional reasons, the petition may not be approved.

Another issue in this proceeding, also raised by the director, is whether the petitioner has established that it has secured sufficient physical premises to house the new office. In response to the director's request for additional evidence on this issue, the petitioner submitted a copy of a lease agreement dated March 1, 2003. It is noted for the record that the petition in the instant matter was filed January 28, 2003. Again, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp., supra*. Furthermore, the petitioner has not described its anticipated space requirements for its export business nor does the lease in question specify the amount or type of space secured. Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner had secured sufficient physical premises to house the new office at the time the petition was filed. For this additional reason, the 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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.