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**U.S. Citizenship  
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Services**

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DT

File: SRC-04-169-52691 Office: TEXAS SERVICE CENTER Date: **JUL 07 2005**

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

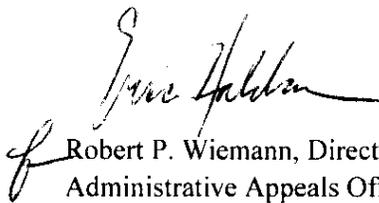
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

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

**DISCUSSION:** The nonimmigrant visa petition was approved by the Director, Texas Service Center. The director certified his decision to the Administrative Appeals Office (AAO) for review. The decision of the director will be withdrawn and the petition will be denied.

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 that operates a restaurant. The petitioner claims that it is the subsidiary of Agropecuaria Varadero C.A., located in Barinas, Venezuela. The beneficiary was initially approved for L-1A status in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director approved the petition, and certified the decision to the AAO for further examination of whether the petitioner has established that it has a qualifying relationship with the foreign entity despite the fact that the petitioner operates its restaurant under a franchise agreement.

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)(1)(ii) provides:

- (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.
- (H) *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.

- (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, or
  - (3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

In the initial petition filed on May 28, 2004, the petitioner indicated that it is the subsidiary of the foreign entity, as the foreign entity owns 51 percent of the petitioner's outstanding shares of stock. In an attached letter, the petitioner explained that it purchased a franchise in order to operate a restaurant. The petitioner submitted its articles of incorporation that reflect that it is authorized to issue 1,000 shares of stock. The petitioner provided copies of two stock certificates that show that, on March 8, 2000, the beneficiary acquired 499 shares of the petitioner's stock, and the foreign entity acquired 501 shares of the petitioner's stock.

On December 16, 2004, the director requested additional evidence. In part, the director requested that the petitioner submit a copy of its franchise agreement with all appendixes and exhibits. The petitioner submitted a response dated March 14, 2005. The petitioner provided a copy of a document titled "Franchise Offering Circular for Prospective Franchisees" in which the petitioner's franchisor disclosed information about the

agreement, yet the copy was missing all even pages that would have appeared between page one and 39. The petitioner provided a copy of its franchise agreement, yet the copy did not include the even pages for the bulk of the document, including those that would fall between pages five and 49. The petitioner provided a copy of its commercial lease as an exhibit, yet pages 32 and 33 were missing.

On April 9, 2005, the director issued a Notice of Intent to Deny the petition. The director noted that the petitioner failed to submit the even numbered pages of the circular, franchise agreement, and exhibits. The director afforded the petitioner 33 days to submit complete copies of the franchise offering circular, franchise agreement, and exhibits.

The petitioner submitted a response dated May 7, 2005. The petitioner indicated that it was providing complete copies of the franchise agreement, franchise offering circular, and exhibits. However, the copies of documents included in the response were missing the same pages as those previously submitted.

On June 10, 2005, the director approved the petition, and certified the decision to the AAO for further examination of whether the petitioner has established that it has a qualifying relationship with the foreign entity despite the fact that the petitioner operates its restaurant under a franchise agreement. The director examined the franchise agreement to determine whether it affords sufficient autonomy to the petitioner, such that the petitioner in fact controls its business operations. The director found that "[t]he submitted evidence appears to indicate that the petitioner has at least as much control over the franchise operations as the franchisor."

Upon review, the director's analysis of the franchise agreement and evidence is appropriate, yet the petition may not be approved due to the fact that the petitioner failed to fully respond to the director's requests for evidence. *See* 8 C.F.R. § 103.2(b)(14).

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. *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). In 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*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all

relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

In the instant matter, the petitioner operates its sole business venture under the terms of a franchise agreement. The fact that the petitioner operates under a franchise agreement does not, by itself, preclude a finding that the petitioner exerts sufficient control over its operations for the purpose of establishing that it has a qualifying relationship with the foreign entity. Petitioner's operating as franchisees may establish that they have a qualifying relationship with a foreign entity. Yet, the terms of the franchise agreement and related documents must be carefully examined in order to determine whether the franchisee exercises ultimate control over its business activity. Thus, the director correctly analyzed the submitted portions of the franchise agreement and franchise offering circular to discover whether they limit the petitioner's control to the extent that the franchisor possesses actual control over the petitioner's business. The director found that the agreements entered into the record do not restrict the petitioner's authority over its operations to the point that it no longer exercises ultimate control.

The AAO agrees with the director's analysis of the portions of the agreements that were submitted. However, as noted above, the petitioner failed to submit complete copies of the franchise offering circular, franchise agreement, and lease. The petitioner failed to provide approximately half of the franchise offering circular and franchise agreement despite the fact that the director requested complete copies on two occasions. The omitted sections may contain provisions that substantially limit the petitioner's control over its business activity.

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).

It is necessary for CIS to examine the complete franchise agreement and franchise offering circular in order to determine whether the petitioner exercises control over its operations. It is critical in all cases that the petitioner fully disclose the terms of any franchise agreements, especially as the agreement relates to the transfer of ownership, voting of shares, distribution of profit, management and direction of the franchise, or any other factor affecting actual control of the entity. *Cf. Matter of Siemens Medical Systems, Inc.*, 19 ISN Dec. 362 (BIA 1986). Control must be established before it can be determined whether the petitioner possesses a qualifying relationship with the foreign entity. Whether or not the petitioner possesses a qualifying relationship with the foreign entity is a material line of inquiry, as such relationship is required in order to establish eligibility for L-1A classification. Section 101(a)(15)(L) of the Act. Thus, the petitioner's failure to submit complete copies of the franchise agreement and franchise offering circular precludes a material line of inquiry and is grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). For this 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 met this burden.

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**ORDER:** The decision of the director dated June 10, 2005 is withdrawn. The petition is denied.