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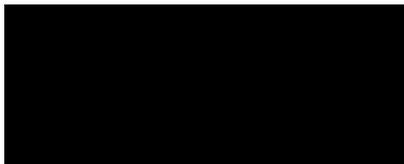
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
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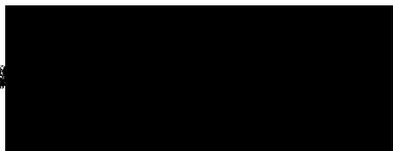


FILE: SRC 03 043 51003 Office: TEXAS SERVICE CENTER Date: JUN 10 2005

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

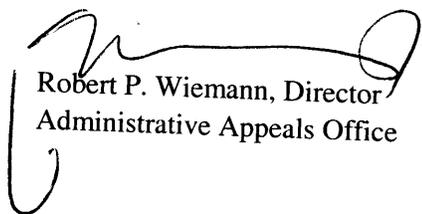
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**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.

According to the documentary evidence contained in the record, the petitioner was established in 1992 and is described as a Mexican Chicken Restaurant. The petitioner claims to maintain a parent-subsidiary relationship with Alimentos y Carnes, located in Tamaulipas, Mexico. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its vice president of operations for three years, at an annual salary of \$48,000.00. The director determined that the petitioner had not submitted sufficient evidence to establish that a qualifying relationship exists between the U.S. and foreign entities.

On appeal, counsel disagrees with the director's decision and states that sufficient evidence has been submitted to establish that a parent-subsidiary relationship exists between the foreign and U.S. 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 issue to be addressed in this proceeding is whether the petitioner has established that a qualifying relationship exists between the U.S. and foreign entity.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define a "qualifying organization" and related terms as:

- (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 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.

The evidence submitted by the petitioner demonstrates the ownership of the U.S. and foreign entities as:

FOREIGN ENTITIY

<u>NAME</u>	<u># OF SHARES</u>	<u>% OF OWNERSHIP</u>
Juan Ochoa	397	79.4
Arnulfo Ruelas	100	20
Jaime Ochoa	1	.2
Jose Ochoa	1	.2
Jesus Ochoa	1	.2

U.S. ENTITY

<u>NAME</u>	<u># OF SHARES</u>	<u>% OF OWNERSHIP</u>
Juan Ochoa	4,600	46
Arnulfo Ruelas	1,700	17
Juan F. Ochoa, Jr.	1,700	17
Carlos Ochoa	2,000	20

The director determined that a parent-subsiary relationship did not exist between the two entities in that the evidence failed to establish that one of the subject companies owned at least 50 percent of the other. The director further determined that an affiliate relationship did not exist between the two entities in that a high degree of common ownership or management had not been shown. The director noted that the evidence showed that [REDACTED] owns a majority of the foreign entity, but owns a minority of the shares in the U.S. entity. The director further noted that the evidence demonstrated that there were five shareholders owning stock in the foreign entity, but only four shareholders owning stock in the U.S. entity.

On appeal, counsel asserts that between both [REDACTED] they control 99.4 percent of the foreign entity and 63 percent of the U.S. entity. Counsel argues that a qualifying relationship exists if these two individuals are considered as one 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. *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 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*. In the instant case, the evidence demonstrates that five shareholders own shares of stock in the foreign entity, while only two of the four shareholders owning shares in the U.S. entity also own shares of stock in the foreign entity. [REDACTED] owns a disproportionate number of shares in each company. In addition, the majority shareholder of the foreign entity is only a minority shareholder of the U.S. entity.

Counsel contends that [REDACTED] as joint shareholders, collectively own 99.4 percent of the foreign entity's stock and 63 percent of the U.S. entity's stock; and therefore as the majority stockholders, owns and controls the U.S. entity. These two individuals cannot be considered as a single entity with majority ownership and control of both companies. The petitioner has not shown that there are any voting proxies or agreements to vote in concert between these two individuals.

Neither CIS nor AAO has ever considered a combination of individual shareholders as a single entity, so that the group may claim majority ownership, unless the group members have been shown to be legally bound together as a unit within the company by voting agreements or proxies.

To establish eligibility in this case, it must be shown that the foreign company and the petitioning entity share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982).

Upon review of the entire record, the petitioner has not established that a qualifying relationship exists between the U.S. and foreign entities. Therefore, the appeal will be dismissed.

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.