

U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 03 103 50342 Office: CALIFORNIA SERVICE CENTER Date: JUN 13 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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 December 16, 2002, and claims to be an international import and export business services organization. The petitioner claims to be a subsidiary of [REDACTED] Philippines. The petitioner seeks to employ the beneficiary temporarily in the United States as general manager of its new office for a period of three years, at a weekly salary of \$460.00. The director determined that the petitioner had failed to submit sufficient evidence to establish that a qualifying relationship exists between the U.S. entity and a foreign entity.

On appeal, the petitioner asserts that sufficient evidence has been submitted to establish the existence of a qualifying relationship 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(1)(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 a subsidiary of the foreign entity. The petitioner submitted a letter of support in which the relationship between the U.S. and foreign entities was described as:

[The foreign entity] and [the U.S. entity] is [sic] 100% owned by the undersigned. The branch in the U.S. is wholly owned by the undersigned per attached fictitious business name statement and the Federal Employer Identification Number is under process. Both the U.S. and Philippine entity [sic] are DBA's of the undersigned.

The petitioner initially submitted as evidence copies of the U.S. entity's Articles of Incorporation, which indicated that the number of shares the U.S. entity was authorized to issue was 25,000. The petitioner also submitted copies of the U.S. entity's corporate charter and U.S. Bank Certification. The petitioner submitted copies of the foreign entity's Certification of Registration of foreign company, and audited financial statements for the years 1999 and 2000.

The director determined that additional evidence would be needed to determine whether a qualifying relationship existed between the U.S. and foreign entities. The director requested in part:

- Proof of stock purchase: Submit evidence to show that the foreign parent company has, in fact, paid for the U.S. entity. The evidence should include copies of the original wire

transfers from the parent company ... canceled checks, deposit receipts, etc., detailing monetary amounts for the stock purchase.

- Minutes of the Meeting-Stock Ownership: Submit a copy of the minutes of the meeting for the U.S. company that lists the stock shareholders and the number and percentage of shares owned.
- Stock Certificates: Submit copies of all of the U.S. company's stock certificates issued to the present date clearly indicating the name of each shareholder.
- Stock Ledger: Submit copies of the U.S. company's stock ledger showing all stock certificates issued to the present date including total shares of stock sold, names of shareholders, and purchase price. (Emphasis in original.)
- Detailed List of Owners: Submit a detailed list of the owners of the U.S. company and what percentage they own. List names, corporate and specific government affiliation, and percentages of ownership.
- Notice of Transaction Pursuant to Corporations: Submit a copy of the U.S. company's Notice of Transaction Pursuant to Corporations Code Section 25102(f) showing the total offering amounts.

In response to the director's request for additional evidence on the subject, the petitioner submitted copies of the foreign entity's financial statements for the years 1999 and 2000, Domestic Trade License, Sole Proprietor's license, bank statements, and canceled checks. The petitioner submitted copies of the U.S. entity's By-Laws, a company stock ledger, a certification of list of owners, bank statements, canceled checks, IRS Tax Number certification, and current business licenses. The "certified" list of owners read in part:

This is to certify that the following individual and/or entity is the share holder of [REDACTED] is the share holder of the U.S. entity affiliates and branch in the United States. (Emphasis in original.)

1. [REDACTED] (Phil.) ... Owns 55% FIFTY-FIVE PERCENT of shares of stocks
2. [REDACTED] ... Owns 45% FORTY-FIVE PERCENT of shares of stocks
3. [REDACTED] ... Owns 25% TWENTY-FIVE PERCENT of shares of stocks

The petitioner did not explain how or why its certified list of owners accounted for the ownership of 125% of the petitioning company.

The U.S. entity stock ledger indicated that [REDACTED] was issued stock certificate number 100 reflecting the purchase of 55 shares of stock for \$4,700.00 on February 19, 2003; [REDACTED] was issued stock certificate number 101 reflecting the purchase of 45 shares of stock for \$2,000.00 on February 21, 2003; and [REDACTED] was issued stock certificate number 103 reflecting the purchase of

25 shares of stock for \$5,000.00 on January 10, 2003. In response to the director's request for evidence, the petitioner stated that the foreign entity was a sole proprietorship.

Despite the director's specific request, the petitioner did not submit copies of stock certificates to substantiate the information contained in the stock ledger. Although the petitioner referenced stock certificates in the letter submitted in response to the request for evidence, a thorough review of the record reveals that the petitioner did not submit this evidence until the appeal was filed. The petitioner's failure to submit this evidence is sufficient grounds for the petition's denial. As provided in the applicable regulations, 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 Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had 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. Consequently, the appeal will be dismissed.

The record demonstrates that three individuals own unequal shares of stock in the U.S. entity, and that the foreign entity is a sole proprietorship owned by [REDACTED]. Although counsel claims that the petitioning company and the overseas company are family owned and controlled companies, this familial relationship does not constitute a qualifying relationship under the regulations. There has been no evidence submitted to show that one person owned a majority of the U.S. entity, therefore, a qualifying relationship between the U.S. and a foreign entity did not exist at the time the petition was filed. Evidence of record fails to demonstrate that voting proxies or other agreements had been made a part of the record demonstrating that any one shareholder, in favor of a mutual shareholder, had relinquished a degree of control over both entities. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary has been or will be employed in a managerial or executive capacity as defined in section 101(a)(44) of the Act. In this matter, the petitioner described the beneficiary's past duties as general manager as: "[o]verall and general management of company; executes & emplements [sic] orate policies & business strategies; organizes staff; hires & fires employees. Rather than providing a specific description of the beneficiary's duties, the petitioner generally paraphrased the statutory definition of executive capacity. *See* section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient to meet the petitioner's burden of proof. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The petitioner further stated that the beneficiary's proposed duties would primarily consist of: setting goals and objectives, reviewing and approving the company's operational and capital budgets, hiring, training, and firing employees, and representing the company in all contract negotiations. In this matter, there has been no evidence submitted to quantify the time the beneficiary will spend performing his job duties. In addition, there has been no evidence submitted to demonstrate that the beneficiary will be supervising a subordinate staff composed of supervisory, professional, or managerial employees who could relieve the beneficiary from performing non-qualifying duties. *See* section 101(a)(44)(A)(ii) of the Act. Furthermore, there is insufficient evidence contained in the

record to demonstrate that the U.S. entity will be able to support a managerial or executive position within one year of operation. For these additional reasons, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought rests solely 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.