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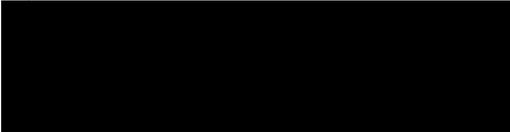
U.S. Department of Homeland Security
20 Mass. Ave, N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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Services

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File: WAC 03 174 50242 Office: CALIFORNIA SERVICE CENTER Date: MAY 11 2005

IN RE: Petitioner:
Beneficiary:



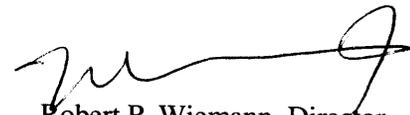
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



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 filed this nonimmigrant petition seeking to extend the employment of its president and chief executive officer 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 California that is engaged in the international trade of furniture. The petitioner claims that it is the subsidiary of Hebei Lihua Import & Export Company, Ltd., located in Hebei, China. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay for an additional three years.

The director denied the petition, determining that the petitioner had failed to establish that the petitioner and the organization which employed the beneficiary in China were qualifying organizations.

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, the petitioner submits a letter and additional evidence which seeks to clarify the petitioner's relationship with the foreign entity. Specifically, counsel for the petitioner alleges that the director misinterpreted the information contained in the petitioner's 2002 tax return, and submits an additional copy of the return for review.

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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (a) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (b) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (c) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (d) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and
- (e) Evidence of the financial status of the United States operation.

The primary issue in the present matter is whether the petitioner and the foreign organization are qualifying organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The regulation defines the term "qualifying organization" as 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.

Additionally, the regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

- (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 this case, the petitioner claims that the U.S. entity is the subsidiary of the Chinese entity. Specifically, the petitioner asserts that the Chinese entity owns 80% of the U.S. entity, with the additional 20% divided equally among [REDACTED]. With the initial petition, the petitioner provided copies of stock certificates evidencing the above ownership percentages, as well as the petitioner's Form 1120, U.S. Corporation Tax Return, for its 2002 tax year. The 2002 return indicated on Schedule K, line 5, that the beneficiary, and not the Chinese entity, owned 80% of the U.S. petitioner. In addition, on line 4, the petitioner affirmatively indicated that it was *not* a subsidiary in an affiliated group or a parent-subsidiary controlled group. Further, on line 7, the petitioner did not indicate that it was filing a Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation.

On June 19, 2003, the director requested additional evidence pertaining to the qualifying relationship between the petitioner and the Chinese entity. In addition to corporate documents pertaining to the foreign entity, the director specifically requested proof of the Chinese entity's purchase of the petitioner's stock. The petitioner submitted a detailed response to the director's request, with numerous corporate documents for both the U.S. and Chinese entities. The petitioner, however, failed to submit the requested evidence establishing that payment had been rendered for the outstanding shares of stock in the U.S. petitioner.

Upon review of the conflicting evidence submitted, the director concluded that the petitioner has submitted, it was not established that it was the subsidiary of the Chinese entity. In addition, the director also examined the claimed relationship between the companies for eligibility as affiliates, but concluded that the record owners of both the U.S. and Chinese entities did not own the same share or proportion of both entities as required by the regulations. The director subsequently concluded that the petitioner's claim of affiliation with the foreign entity was invalid, and as a result, the petition was denied on December 3, 2003.

The petitioner appealed the decision, asserting that an inadvertent oversight in the director's examination of the federal tax return resulted in the director's denial. In support of this contention, the petitioner provides a second copy of the petitioner's 2002 tax return, and provides a line-by-line examination of the director's alleged errors and the petitioner's alternative interpretation. The AAO will first examine the record of proceeding and the director's decision prior to examining the petitioner's claims on appeal.

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*, 19 I&N Dec. at 595.

Upon review of the record of proceeding, the petitioner has not established that it has the required qualifying relationship with the Chinese entity.

In this case, the petitioner has provided documentary evidence outlining the shareholder interests in the U.S. and foreign entities, and has supplemented this evidence with explanatory statements which discuss the percentages of shareholder ownership. Specifically, the statements of counsel accompanying the initial petition claimed that the Chinese entity owned 80% of the petitioner, while [REDACTED] and [REDACTED] each owned a 10% interest. The corporate documentation accompanying the petition, namely, the stock certificates, corroborated these claims. However, the petitioner's 2002 Federal and State tax returns indicate that the majority owner was in fact the beneficiary and not the Chinese entity as claimed.

After finding this evidence contradictory and insufficient, the director requested additional evidence establishing the qualifying relationship, with specific focus on the payment rendered for the ownership interests in the petitioner. Since the petitioner failed to submit this evidence, the director focused on the contradictory evidence in the record and concluded that the petitioner and the Chinese entity were not qualifying organizations. On appeal, counsel for the petitioner asserts that the director's finding was in error, and submits a second 2002 tax return for review.

Upon review of the record of proceeding, the AAO concurs with the director's finding that the U.S. and Chinese entities are not affiliates, nor does a parent-subsidiary relationship exist between them as defined by the regulations at 8 C.F.R. §§ 214.2(l)(1)(ii)(I) and (K).

On appeal, counsel for the petitioner claims that the director's review of the 2002 tax return was incorrect, and submits another copy of the 2002 return which is claimed to be "the same as the one filed with the Service." However, a review of the tax return filed on appeal indicates that an entirely different Schedules E and K were submitted, in addition to the fact that this return was completed by a different person than indicated on the return initially submitted with the petition. This newly submitted Schedule K indicates that the Chinese entity owns 80% of the entity, in contrast to the statements provided on Schedule K in the initial return. The petitioner also indicated on Schedule K that it was required to file Form 5472, and includes a copy on appeal. The initial Form 1120 submitted by the petitioner was not accompanied by a Form 5472.

The information submitted on appeal appears to have been altered in an attempt to comply with the regulations and overcome the director's denial. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

In this matter, the original tax return submitted with the petition is the one that the AAO will accept as valid. As previously discussed, this document severely contradicts the petitioner's claim that the Chinese entity owns 80% of the U.S. petitioner. 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. at 591-92. In addition, the petitioner was given the opportunity to submit evidence establishing the purchase of the stock by the Chinese entity, but failed to do so. 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).

The definition of subsidiary requires that a parent own, directly or indirectly, more than half of a firm, corporation, or other legal entity and control the entity, own, directly or indirectly, half of the entity and control the entity, or own, directly or indirectly, 50 percent of a 50-50 joint venture and have equal control and veto power over the entity, or own, directly or indirectly, less than half of the entity, but in fact control the entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). The record clearly indicates that at the time of the filing of the petition, the petitioning enterprise did not maintain a qualifying "subsidiary" relationship with the overseas company based on the contradictory evidence that was not clarified by the petitioner.

Although the newly-submitted tax return corroborates the original claim of a qualifying relationship between the U.S. petitioner and the claimed foreign affiliate, the evidence cannot establish the petitioner's eligibility in this proceeding. The regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). There is no explanation for two widely different tax returns submitted in support of the petitioner's ownership structure, and such a discrepancy casts doubt on the validity of all evidence submitted in this matter.

Based on the evidence presented, it is concluded that the petitioner and the Chinese entity were not affiliates nor did they have a parent-subsidary relationship as of the filing date of this petition, and thus did not have a qualifying relationship as required by the regulations.

Beyond the decision of the director, the petitioner should note that the evidence submitted in support of the qualifying relationship between the Chinese and U.S. entities was insufficient. Even if the original tax return corroborated the ownership of the U.S. petitioner, the documentation in the record was insufficient to satisfy the regulatory requirements. The petitioner submitted copies of share certificates for the U.S. entity, and the petitioner's 2002 tax return. This evidence alone is insufficient to satisfy the requirements of a qualifying relationship. 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.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

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.