

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



D7

FILE: SRC 03 178 53594 Office: TEXAS SERVICE CENTER Date: APR 24 2006

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

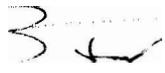
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Chief  
Administrative Appeals Office

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

The petitioner states that it is engaged in the wholesale of wireless equipment, accessories, and imports. It seeks to extend the employment of the beneficiary in the position of vice president and general manager as a nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L). The petitioner claims to be the subsidiary of [REDACTED] located in Karachi, Pakistan. 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 concluding that the petitioner had not been doing business for the previous year as required by the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(B). Specifically, the director found that the minimal evidence of the petitioner's business dealings in the United States suggested that it was not doing business as defined by the regulations.

The petitioner filed an appeal in response to the denial. On appeal, counsel for the petitioner contends that the evidence previously submitted had been sufficient to establish that the petitioner was doing business as defined by the regulations. In addition, counsel contended that the petitioner admittedly could not meet its target of sales during the previous year due to poor economic conditions, but that its sales for the current period reflected an increase. In support of these contentions, counsel for the petitioner submits a brief statement and additional evidence.

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 managerial or executive capacity; and
- (e) Evidence of the financial status of the United States operation.

The primary issue in this matter is whether the petitioner has been doing business as required by the regulations for the previous year. The regulation at 8 C.F.R. §214.2(l)(1)(ii)(H) defines the term "doing business" as "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."

In this matter, the petitioner claims that it is engaged in the wholesale of wireless equipment, accessories, and imports. The director denied the petition, finding that the petitioner had failed to satisfy the regulatory requirements for doing business for the previous year.

With the initial petition, minimal evidence of the petitioner's business practices was submitted. Consequently, in the request for evidence issued on September 29, 2003, the director requested documentation establishing that the petitioner had been doing business during the previous year as required by the regulations. In the response dated December 26, 2003, counsel for the petitioner submitted various documents, including software usage agreements, letters from various wireless companies regarding dealer agreements, and invoices showing that the petitioner purchased numerous types of wireless products. Many of these documents were dated after June 2003, the month during which the extension request was filed and the one-year new office petition expired.

On review of the evidence submitted, the AAO concludes that the petitioner failed to demonstrate that it had been doing business during the previous year. The record indicates that the beneficiary was granted a one-year period of stay from June 12, 2002 to June 12, 2003 to open a new office. The record further indicates that the petitioner would engage in the wholesale of wireless equipment, accessories, and imports. However, despite the various forms of documents submitted in response to the director's request, there is no evidence establishing that the petitioner actually engaged in the wholesale of wireless equipment. While the record indicates that the petitioner purchased various wireless phones and accessories, there is no evidence in the record to demonstrate the petitioner's sale of these items to the general public. No invoices evidencing the petitioner's sales were submitted, despite the director's specific request in the request for evidence dated September 29, 2003. 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 petitioner's bank statements show "customer deposits" and bank card withdrawals, yet none of the transactions are identifiable as sales or deposits from sales. Finally, there is no documentation or information regarding the activities of the beneficiary and the petitioner during the time period prior to November 2002.

On appeal counsel submits copies of W-2 forms, evidencing wages paid by the petitioner to the beneficiary and three other employees in 2003, and also submits a statement from Amir Kassam, Certified Public Accountant, claiming that the petitioner's business did not reach its targeted sales during the previous year but that the business was becoming more profitable.

Based on this limited information, it is clear that the petitioner was not doing business as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). The AAO acknowledges the petitioner's claim that business was slow to start due to poor economic conditions, and that it is now becoming more prosperous as business conditions improve. However, the record is devoid of an explanation as to what the petitioner did between June 2002 and June 2003, and further lacks any explanation or documentation regarding other activities engaged in by the petitioner to promote its business during this period. The fact that the petitioner did not appear to commence operations during this period.

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of a new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) require the petitioner to demonstrate that it has been doing business for the previous year. In the present matter, the evidence submitted at the time of filing does not support the petitioner's claim that it had been conducting business as required. The fact that it began consistently improving its sales after the expiration of the beneficiary's initial stay does not automatically entitle the petitioner to an extension of the visa, for it fails to change the fact that the petitioner did not conduct business during the previous year. For this reason, the petition may not be approved.

Moreover, although not explicitly addressed in the decision, the record contains no documentation to persuade the AAO that the beneficiary would be employed 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 could support such a position after one year of approval of the initial petition. The petitioner has not submitted a detailed statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the

extended petition so that the AAO can determine whether the beneficiary will be employed in a primarily managerial or executive capacity. Although the petitioner submitted an organizational chart and claims that the beneficiary will be employed in a primarily executive capacity, the record is not persuasive that the beneficiary is or will in fact be employed in such a capacity. At the time of filing, it appears that the petitioner had only one other employee on its payroll. The organizational chart identifies positions such as "managers," "human resources" and "general workers," none of which were filled at the time of filing by actual employees. The absence of a subordinate staff to relieve the beneficiary from performing non-qualifying duties coupled with the vague description of the beneficiary's duties is insufficient to establish that the beneficiary will function primarily as an executive. For this additional reason, the petition may not be approved.

Additionally, the petitioner has not established that a qualifying relationship exists between the petitioner and the foreign entity. The petitioner claims that the U.S. petitioner is a wholly owned subsidiary of the foreign entity. However, the Minutes of the Meeting of Shareholders for the petitioner, dated December 31, 2001, indicates that the company is owned by four individuals, namely, [REDACTED] the beneficiary, [REDACTED], and [REDACTED]. The corporate documentation for the foreign entity provides a certificate listing the same four shareholders as listed in the meeting minutes of the petitioner dated December 31, 2001. However, on Schedule M of the petitioner's Form 1120, U.S. Corporation Income Tax Return for 2002, the petitioner indicates on Line 5 that one individual owns 100% of the entity. Furthermore, Line 10 indicates that the petitioner had two shareholders, and the supplemental attachment to Schedule K indicates that the shareholders are [REDACTED] and [REDACTED].

As general evidence of a petitioner's claimed qualifying relationship, stock certificates, 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. 362 (BIA 1986). Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In this case, the conflicting claims of ownership and the lack of share certificates and additional documentation make it impossible for the AAO to conclude that a valid qualifying relationship exists between the petitioner and the claimed foreign parent. 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. 582, 591-92 (BIA 1988). For this additional reason, the petition may not be approved.

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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

**ORDER:** The appeal is dismissed.