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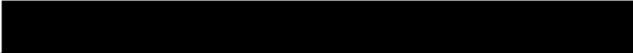
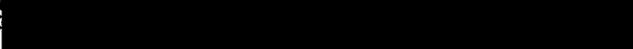
U.S. Citizenship
and Immigration
Services

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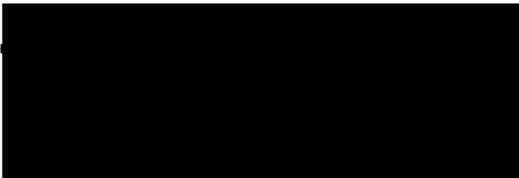


FILE: WAC 03 001 52746 Office: CALIFORNIA SERVICE CENTER Date: **JUL 27 2006**

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)

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, California 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 summarily dismissed.

The petitioner states that it is engaged in the "electric equipment, parts and machine trading and repair" business. It claims to be a subsidiary of [REDACTED], located in Hong Kong. The United States entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), as an executive or manager for three years. The petitioner seeks to employ the beneficiary in the position of vice president.

On August 30, 2002, the director denied the petition on the grounds that the petitioner failed to establish that: (1) a qualifying relationship exists between the foreign company and the United States entity; and, (2) the beneficiary was employed by the foreign company in a primarily executive or managerial capacity.

The petitioner subsequently filed an appeal on September 20, 2002. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. Counsel indicated on Form I-1290B that he would submit a brief and/or evidence to the AAO within 30 days. As no additional evidence has been incorporated into the record, the record will be considered complete.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Counsel's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I & N Dec. 1 (BIA 1983); *Matter of Laureano*, 19 I & N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I & N Dec. 503, 506 (BIA 1980).

The first issue to be discussed in the present matter is whether the petitioner has established that a qualifying relationship exists with the beneficiary's overseas employer. As noted by the director, the petitioner failed to provide sufficient evidence to establish that a qualifying relationship exists between the foreign company and the petitioner. In addition, the director noted that several inconsistencies in information and documentation were present in the petition. 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).

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer is the same employer (i.e. one entity with

"branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

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*, 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, CIS is unable to determine the elements of ownership and control.

According to the ownership chart submitted by the petitioner, it appears that [REDACTED] wholly owns two branch offices, [REDACTED] and [REDACTED] and [REDACTED] and 51% of [REDACTED] the petitioner]. However, in reviewing the record, the supporting documentation does not correspond with the ownership structure claimed by petitioner.

Specifically, the petitioner submitted two stock certificates for [REDACTED]. The stock certificate number one certifies that 1000 shares of stock were issued to [REDACTED]. The stock certificate number two indicates that 500 or 510 (both amounts are written on the stock certificate) were issued to [REDACTED], which petitioner claims is wholly owned by the parent company abroad, [REDACTED]. In addition, the stock transfer ledger submitted by the petitioner verifies this information stating that [REDACTED] paid \$100,000 for his shares, and [REDACTED] paid \$51,000 for the value of its shares. Thus, according to the stock certificates and the stock ledger, it appears that [REDACTED] is the majority shareholder of the United States petitioner. This information is inconsistent with the claim made by petitioner that the parent company of the United States petitioner is [REDACTED]. 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.

Furthermore, the petitioner's IRS Form 1120, U.S. Corporation Income Tax Return, for 2000 and 2001 indicate at Schedule K that [REDACTED] 100 percent of the company's common stock. In addition, the petitioner responded "no" to the question as to whether a foreign person owns directly or

indirectly at least 25% of the total voting power of all classes of stock of the corporation entitled to vote or the total value of all classes of stock of the corporation. According to the IRS Form 1120, it appears that the petitioner is not owned by the foreign entity which is required in order to establish a qualifying relationship between the petitioner and a foreign company. The petitioner has not resolved this conflicting information. 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).

In addition, upon review of the record, the stock transfer ledger indicates a total capital stock for the petitioner in the amount of \$100,000.00. However, the petitioner's IRS Form 1120, U.S. Corporation Income Tax Return, states in item 22 that the value of the capital stock is \$10,000.00. It is unclear why the tax returns state a different value of stock for the company from the stock ledger. Again, 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. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

Furthermore, the director issued a request for evidence on June 12, 2002 specifically requesting a copy of the foreign company's annual report that lists all affiliates, subsidiaries, and branch offices, and percentage of ownership. The petitioner failed to submit this document in response. The purpose of the request for evidence is to establish the claimed qualifying relationship between the petition and the foreign company. Further, the purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). 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). For the foregoing reasons, the petitioner has not established that a qualifying relationship exists between the U.S. company and the beneficiary's foreign employer.

The second issue in this proceeding is whether the petitioner has established that the beneficiary was employed abroad by the parent company in a primarily managerial or executive capacity.

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties during his employment abroad by the parent company. Thus, the description of the beneficiary's duties fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner states that the beneficiary's duties included "plan, develop and establish policies and objectives for the company," "control overall operations of this [electrical technique] department managerially and technically," and "design annual financial plan each year, follow up and check the status of the accomplishment of the plan. If necessary [the beneficiary] needs to reorganize the plan in accordance with the development of the company." The petitioner did not, however, define the beneficiary's goals and policies, or clarify the role of the electrical technique department that the beneficiary will supervise. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *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).

Although the petitioner asserts that the beneficiary is managing a subordinate staff, the record does not establish that the subordinate staff is composed of supervisory, professional, or managerial employees. See section 101(a)(44)(A)(ii) of the Act. The petitioner did not submit sufficient documentation regarding the number of employees the beneficiary supervised or job duties of the subordinate staff. The petitioner indicated that the beneficiary would supervise electricians, electrical engineers and a secretary. However, the petitioner never submitted job duties for these positions. In addition, according to the payroll list for the department supervised by the beneficiary, there are no engineers in the department. Instead, there is one secretary and the rest of the subordinates are electricians. A first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act. Since the petitioner did not submit sufficient evidence to establish that the beneficiary was primarily supervising a staff of professional, supervisory or managerial employees, the beneficiary cannot be deemed to be primarily acting in a managerial capacity. For this additional reason, the appeal will be dismissed.

While not directly addressed by the director, the minimal documentation of the petitioner's business operations raises the issue of whether the petitioner is a qualifying organization doing business in the United States. Specifically, under the regulation at 8 C.F.R. § 214.2(1)(1)(ii)(G)(2) a petitioner must demonstrate that it is engaged in the regular, systematic, and continuous provision of goods or services and does not represent the mere presence of an agent or office in the United States. For this additional reason, the appeal must be dismissed and the petition denied.

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).

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

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. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.