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U.S. Citizenship  
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Services

D7



FILE: WAC 01 071 54458 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:

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.<sup>1</sup>

The petitioner [REDACTED] USA, Inc. dba Signatures, a Nevada corporation, states that it is engaged in the jewelry manufacturing business. The petitioner claims that it is an affiliate of [REDACTED] located in New Delhi, India. It seeks to employ the beneficiary temporarily as a new employee and as its chief executive officer of its new office in the United States, pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

The director denied the petition based on the following conclusions: 1) the petitioner's failure to establish that the beneficiary has been and will be employed in a primarily managerial or executive capacity; and, 2) the petitioner's failure to establish a qualifying relationship between the U.S. entity and the beneficiary's foreign employer.

On the Form 1-290B Notice of Appeal, counsel for petitioner asserts: "[the] service did not take into account position, duties and responsibilities of beneficiary which clearly proves executive position." Counsel for petitioner further asserts that the beneficiary will hold an executive position since the beneficiary has the "responsibility and ability to sign all lease agreements, open bank accounts with authority to sign checks...authority to sign all documents required to open a business." In addition, the appeal states that the beneficiary is a partner in the business and directs all components of the business in the United States. Finally, the petitioner asserts that the same stockholders own and control both the foreign parent company and the United States entity.

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 director concurs with the director's decision and affirms the denial of the petition. The director's decision states that the evidence submitted does not establish that the beneficiary will hold a position of managerial or executive capacity in the United States. The director found that the petitioner has not established that the beneficiary will be performing duties which primarily require her to plan,

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<sup>1</sup> It is noted that the petitioner is represented by an attorney that has been suspended from the practice of immigration law. See U.S. Department of Justice, Executive Office for Immigration Review website, "List of Disciplined Attorneys," <http://www.usdoj.gov/eoir/profcond/chart.htm> (as of December 3, 2004). In addition, on March 5, 2003, the petitioner's attorney requested that the AAO withdraw his name as the attorney of record. The attorney based his withdrawal upon the suspension of his license to practice law by the Supreme Court of the State of Washington on December 12, 2002. For this reason, the petitioner will be treated as self-represented.

organize, direct and control the organization's major functions by working through other managerial or professional employees in the United States. The petitioner's general objections to the denial of the petition, without specifically identifying any errors on the part of the director or providing new evidence to support that the beneficiary is in a position of managerial capacity, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I & N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190 (Reg. Comm. 1972)).

On the Form I-129, the petitioner described the beneficiary's United States duties as: "manage and oversee all aspects." In addition, on appeal, the petitioner states, "This high level of authority is not given to anyone else, including day to day employees. [The petitioner] has the responsibility and ability to sign all lease agreements, open bank account with authority to sign checks." The petitioner goes on to state, "it is inconceivable that a company would allow this type of control to a person who is not in an executive or managerial position."

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).

In addition, the petitioner does not clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. On appeal, the petitioner asserts that the beneficiary will function as both a managerial and executive employee. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

Furthermore, when a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. See 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. The petitioner fails to submit evidence on appeal to demonstrate the requirements as described above.

The director also stated in his decision that the petitioner did not submit sufficient evidence to establish a qualifying relationship exists between the petitioner and the foreign company. On appeal, the petitioner repeats the same information submitted initially with the petition. The petitioner asserts that foreign company and the U.S. company have the same exact ownership. However, the appeal does not provide any new evidence regarding the qualifying relationship.

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, the articles of incorporation 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.

In this case, the director specifically requested that the petitioner submit copies of the U.S. company's stock certificates, stock ledger, and evidence that the petitioner's claimed shareholders have in fact paid for their stock ownership. The petitioner failed to submit the requested evidence in response to the director's request, and as a result, the record is devoid of evidence of the petitioner's ownership and control. Failure to submit requested evidence that precludes a material line of inquiry shall be ground for denying the petition. 8 C.F.R. § 103.2(b)(14).

Despite the unsupported assertions from the petitioner on appeal, based on the minimal documentation in the record, it cannot be determined that the petitioner has established that the beneficiary will be in a managerial or executive capacity position, or that the United States entity and the entity in India have a qualifying relationship. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Further, the 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.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily 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 met this burden.

**ORDER:** The appeal is summarily dismissed.