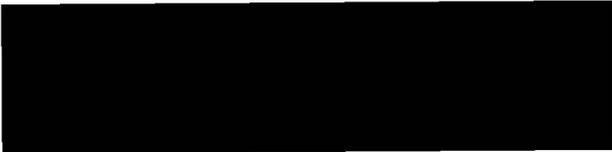




U.S. Citizenship
and Immigration
Services

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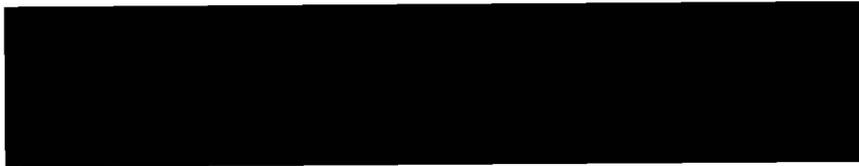
File: SRC-03-168-52721 Office: TEXAS SERVICE CENTER Date: JUN 16 2006

IN RE: Petitioner:
Beneficiary:



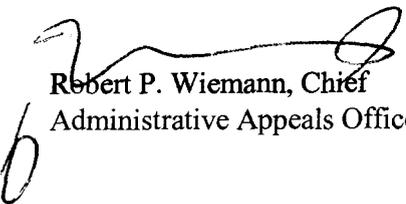
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, 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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its general manager 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 under the laws of the state of Connecticut and is engaged in the construction business. The petitioner claims that it is the branch of [REDACTED], a Limited Partnership in Colombia. The beneficiary was initially granted a one-year period of stay, and then a two-year extension, in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish a qualifying relationship or that the foreign organization was doing business in Colombia.

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, counsel for the petitioner asserts that the Citizenship and Immigration Services (CIS) erred in its denial, but did not specifically state that the denial was in error as a matter of law. In support of this assertion, the petitioner submits an appeal brief and some additional evidence for the petitioner.

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)(14) states that an petitioner seeking to extend the employment of an intracompany transferee is not required to submit supporting documentation unless requested by the director. In this case the director issued a request for evidence (RFE). In the RFE the director requested evidence concerning the qualifying relationship and employment in a managerial or executive capacity.

An intracompany transferee must have been employed by a qualifying organization. 8 C.F.R. § 214.2(l). A qualifying relationship must exist for the duration of an aliens stay under this classification. 8 C.F.R. § 214.2(l)(1)(ii)(G). A qualifying organization means a United States or foreign firm, corporation or other legal entity that:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in (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 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).

The term "doing business" is defined in the regulations 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." 8 C.F.R. § 214.2(l)(1)(ii).

The first issue in this matter is the existence of a qualifying relationship. The petitioner initially asserted that it was a division of the foreign organization. The director requested further evidence that the foreign organization was doing business. Specifically the director requested current financial records, annual reports, profit and loss statements, other accountant reports, banking records, employee rosters, evidence of business conducted, such as invoices, bills of sale and product brochures. Much of this was submitted for the petitioner, however, the only evidence submitted as proof that the foreign organization was doing business was a certificate of existence from a chamber of commerce in Colombia.

On January 26, 2004, the director denied the petition. The director determined that the petitioner did not establish a qualifying relationship, reasoning that the foreign organization was not doing business and that petitioner had not established ownership or control of the petitioner.

On appeal, counsel for the petitioner asserts that the director's conclusions are erroneous.

Upon review, counsel's assertions are not persuasive and the decision of the director will be upheld. In the brief, counsel restates portions of the Act and various sections of Title 8 of the Code of Federal Regulations, repeatedly claiming that the petitioner is eligible for the benefit sought. However, the director did a thorough analysis and specifically discussed inconsistencies among a number of the submitted documents. 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. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In this case there is no probative evidence that the foreign organization is doing business. 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. 190 (Reg. Comm. 1972)). Despite the director's specific request for such evidence, the only documentation submitted was a certificate of existence. This evidence, standing alone, is not sufficiently probative to demonstrate a systematic and continuous provision of goods and services. Further, the non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The AAO must conclude that the foreign organization is not doing business.

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 International*, 19 I&N Dec. at 595.

In the RFE the director asked petitioner to provide documentary support of ownership and control. The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As control is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. In this case, the petitioner has asserted that each of the two entities are owned by the same four persons and submitted a certificate of registration from Colombia. Counsel then states in the appeal brief that "by definition, as the Connecticut branch of that foreign entity, the Petitioner was identically owned and controlled." This evidence is not sufficiently probative to demonstrate ownership and control. Further, Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In this case the majority owners are limited partners. A limited partner does not exercise control, and merely has an ownership interest. In the context of this petition the petitioner has not submitted sufficiently probative evidence to demonstrate actual ownership or control.

Petitioner has submitted no other probative evidence of a qualifying relationship with a foreign affiliate. Without evidence supporting counsel's assertion that the president of the foreign parent owns the foreign affiliate, and no credible evidence that the foreign parent is still doing business as defined by statute, the AAO does not have enough information to make a determination that a qualifying relationship exists. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof as the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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). Thus, the petitioner has failed to prove a qualifying relationship exists on two grounds, ownership and doing business. For these reasons the petition will be denied.

The petitioner noted that CIS approved other petitions that had been previously filed on behalf of petitioner. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and

gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). In the instant matter petitioner has not met the burden of proving that the beneficiary will be employed in a managerial or executive capacity, nor has petitioner proven that a qualifying relationship with a qualifying organization exists. Subsequently, the appeal will be dismissed and the petition is hereby denied.

ORDER: The appeal is dismissed.