

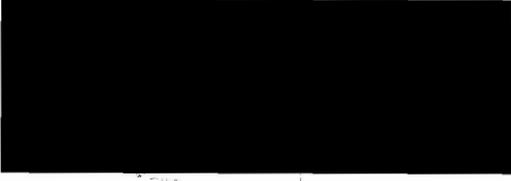


U.S. Citizenship
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Services

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File: SRC 03 126 50040 Office: TEXAS SERVICE CENTER

Date: MAY 04 2006

IN RE: Petitioner:
Beneficiary:



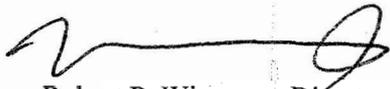
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Director
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 employ 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 Florida and is engaged in the restaurant business.** The petitioner claims that it is the subsidiary of [REDACTED] located in Bogota, Colombia. The beneficiary appears to have been initially granted a one-year period of stay in L-1A status to open a new office in the United States, was subsequently denied an extension of stay, and then left and re-entered the United States in B-2 visitor status, and now the petitioner seeks once again to change the beneficiary's classification to L-1A status.

Upon initial review of the matter, the director sent the petitioner a request for additional evidence on June 16, 2003. Specifically, the director requested the following: (1) evidence of the current ownership and control of the franchised restaurant; (2) a detailed description of the foreign employment of the beneficiary, including his title, job duties, percentage breakdown of the time spent on each duty, the qualifications required for the position, level of authority, including the beneficiary's position within the foreign entity's organizational hierarchy, dates of employment, the individual(s) responsible for product sales/services or production of the entity's product, and subordinate managers/supervisors, including their titles, job duties, and educational background; and (3) evidence that the [petitioner] and the foreign entity are currently "doing business," including financial records, e.g., tax returns, annual reports, profit and loss statements, banking records, etc., employee rosters, invoices, bills of sale, and product brochures of goods sold or produced by the United States and foreign entities.

In response, the petitioner submitted the following: (1) the U.S. entity's Articles of Incorporation; (2) shareholder certificates of the U.S. entity; (3) minutes of one of the U.S. entity's shareholder meetings; (4) the franchise agreement for the U.S. entity's restaurant; (5) information on the beneficiary's employment with the foreign entity, including his job duties; (6) information on the beneficiary's subordinate employees while employed by the foreign entity; (7) a second, amended organizational chart for the foreign entity; (8) payroll records for the foreign entity; (9) 2002 tax returns for the foreign entity; (10) the foreign entity's bank records; (11) correspondence and invoices for the foreign entity; (12) a brochure on the foreign entity's nursing school; and (13) lists of the foreign entity's nursing students.

The director denied the petition concluding that the petitioner failed to establish that it had a qualifying relationship with the foreign entity.

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 law was not applied properly with regard to (1) the ownership and control of the franchised restaurant and (2) the qualifying relationship between the petitioner and the foreign entity. In support of this assertion, the petitioner submits additional evidence.

Upon review and for the reasons discussed herein, counsel's assertions are not persuasive and, thus, the AAO will dismiss the appeal.

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 primary issue in the present matter is whether the petitioner and the foreign entity are qualifying organizations.

Title 8 C.F.R. § 214.2(l)(1)(ii)(G) 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.

In addition, 8 C.F.R. § 214.2(l)(1)(ii)(K) defines the term "subsidiary" as:

[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.

The petitioner in this case maintains that the foreign entity owns half of the U.S. entity as part of a 50-50 ownership arrangement with another Colombian company. In support of this assertion, the petitioner submitted its Articles of Incorporation, shareholder certificates, as well as the minutes of one meeting of the company related to stock issuance and ownership of the U.S. entity.

Upon review of all of the documents submitted, however, it appears that there is a serious discrepancy in the record with regard to the ownership of the petitioner. Specifically, on Attachment B to the franchise agreement signed by the petitioner, the listed owners of the petitioner in "equal shares" are neither the foreign entity nor the other Colombian company. In the franchise agreement, the listed owners/stockholders of the petitioner are six individuals, one of whom is the beneficiary. Based on this document, it would appear that the foreign entity does not own any part of the U.S. entity and, thus, the petitioner would not qualify as a subsidiary of the foreign entity. 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).

Given the information provided in the franchise agreement, the petitioner and counsel's assertion that the foreign entity owns 50% of the U.S. entity is not credible. If CIS fails to believe that a fact stated in the petition is true, as is the case in this matter, 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 addition, it should also be noted that in its letter dated March 28, 2003, counsel for the petitioner claims that [REDACTED] one of the listed owners of the petitioner in the franchise agreement, owns 100% of the foreign entity. Thus, while the assertions of counsel do not constitute evidence and will not satisfy the petitioner's burden of proof, absent any evidence to the contrary, the petitioner has also failed to establish that it qualifies as an affiliate under 8 C.F.R. § 214.2(l)(1)(ii)(L) due to the apparent difference in the ownership of the petitioner (owned by six individuals) and the foreign entity (owned by one individual). See *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).

Moreover, with regard to another discrepancy in the record, the petitioner submitted two disparate organizational charts for the foreign entity, the differences in which have not been explained. Specifically, the first organizational chart indicates that the general manager is the most senior-level employee of the company and clearly shows that the beneficiary's position of administrative manager only has four subordinate employees: one general secretary, two secretaries, and one general services employee. The organizational chart submitted in response to the director's request for evidence, however, indicates that the beneficiary's position of administrative manager, and not the general manager, is the most senior-level employee of the company. In fact, the general manager position does not even appear on the second organizational chart. In addition, the second organizational chart indicates that the beneficiary's position of administrative manager has thirty subordinate employees, and not four as previously indicated: one general secretary, one academic director, six directive advisers, three secretaries, two coordinators, two general services employees, eleven educational employees [teachers], and four practice instructors. To make matters more confusing, counsel in his letter dated September 3, 2003 states that the beneficiary's position of administrative manager has twenty-five subordinate employees: four supervisors, three secretaries, eleven teachers, four instructors, and three general services employees. Given the dissimilar and conflicting information provided, the petitioner faces another serious credibility issue. 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).

Accordingly, upon review of the petition and the conflicting evidence presented, the petitioner has not established that it meets the definition of a qualifying organization as the "same employer or a subsidiary or affiliate thereof" as required by section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Thus, the decision of the director will be affirmed, and the petition will be denied.

It should be noted for the record that simply owning a franchise, in itself, does not mean a petitioner cannot meet the requirements for a qualifying organization. However, in such cases, the ownership and control of the franchise is an issue that would normally need to be examined. As the petitioner failed to prove a qualifying relationship between itself and the foreign entity and as the appeal will be dismissed on this basis, this additional issue need not be examined further.

Beyond the decision of the director, it is noted that the petitioner indicated under penalty of perjury in Part 4 of the Petition for a Nonimmigrant Worker (Form I-129) that the beneficiary had been denied the requested classification within the past seven years. Besides indicating that the beneficiary had previously been denied L-1A classification, however, no other additional information was provided regarding the denial. Form I-129 specifically requests that the petitioner explain on a separate piece of paper the circumstances surrounding the previous denial. More importantly, the regulation at 8 C.F.R. § 214.2(l)(2)(i) states that "[f]ailure to make a full disclosure of previous petitions filed may result in a denial of the petition." Simply checking a box on Form I-129 does not meet the requirements of full disclosure under 8 C.F.R. § 214.2(l)(2)(i); the plain meaning of full disclosure in this case entails the complete revelation of all material facts regarding the previous denial of the beneficiary's L-1A classification, e.g., the previous petition's receipt number and the reason(s) for its denial. *See Black's Law Dictionary* 177 [REDACTED]. Thus, as the petitioner failed to fully disclose the facts surrounding the previously filed petition and its subsequent denial, this petition will further be denied as a matter of discretion.

Moreover, while not explicitly addressed in the decision, the record contains no documentation to persuade the AAO that the beneficiary will 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 would support such a position within one year of approval of the petition. As the appeal will be dismissed on the grounds discussed above, this issue need not be examined further.

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.