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U.S. Citizenship
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FILE: WAC 05 126 53867 Office: CALIFORNIA SERVICE CENTER Date: **NOV 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 filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge 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, a Nevada limited liability company, claims to be engaged in the recovery of redundant assets for local and offshore recycling. The petitioner states that it is an affiliate of [REDACTED] located in Australia. The petitioner seeks to employ the beneficiary as its regional operations manager for a one-year period.

The director denied the petition on April 12, 2005, concluding that the petitioner failed to establish that a qualifying relationship exists between the U.S. entity and the foreign entity. The director observed that while some common ownership exists between the two companies, they did not meet the regulatory definition of "affiliates," as they are not owned by the same group of individuals, with each individual owning and controlling approximately the same share or proportion of each 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 does not dispute the director's findings or assert that the decision was based on an erroneous conclusion of fact or law. On the Form I-290B, Notice of Appeal, counsel for the petitioner states the following:

Petitioner has completed the restructuring of their organization and has forwarded faxed copies of the signed resignation, redemption agreement, assignment of interest and amendment to the operating agreement. . . . The new organization will exclude one foreign minority owner from ownership in the U.S. Company. . . . The new structure which is the basis of the qualifying relationship is as follows:

RRT (Australian Co.):

[U.S. Company]:

[REDACTED]

[REDACTED]

Counsel submits a brief and additional evidence in support of the appeal, including documentation to establish that, as of May 2005, the U.S. entity and the foreign entity are majority-owned and controlled by Barrier Trust.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The evidence submitted on appeal regarding the petitioner's current ownership and control has no bearing on a determination as to the petitioner's and beneficiary's eligibility as of the date this petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

To establish eligibility in this case, it must be shown that the foreign employer and the petitioning entity share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982).

In this case, at the time of filing, the U.S. entity was owned by four members with no majority owner, and the foreign entity was owned by three of the same members, one of whom owns a 60 percent majority interest in the company. Absent documentary evidence such as voting proxies or agreements to vote in concert so as to establish a controlling interest, the petitioner has not established that the same legal entity, individual, or group of individuals owned and controlled both entities, and thus has not established the claimed affiliate relationship. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L). Based on the evidence submitted, the director correctly concluded that the petitioner did not establish that a qualifying relationship existed between the U.S. and foreign entities, and counsel does not dispute this finding on appeal.

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 the petitioner 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.