

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

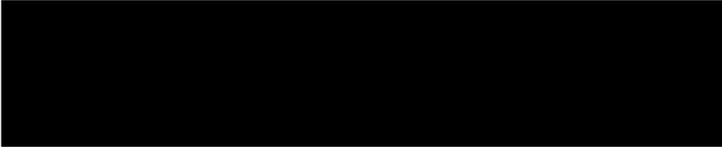
U.S. Department of Homeland Security
20 Massachusetts Ave N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

57



File: WAC 06 068 50080 Office: CALIFORNIA SERVICE CENTER Date: **JUL 27 2007**

IN RE: Petitioner:
Beneficiary:



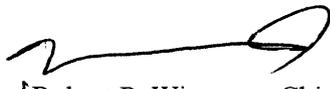
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, California 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 seeks to employ the beneficiary temporarily in the United States as an L-1B 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 U.S. petitioner, a corporation organized in the State of California that is engaged in wholesale of drapery products, seeks to employ the beneficiary as a Custom Product and Service Specialist. The petitioner claims that it is the subsidiary of Curzon Products (Pty) Ltd., located in Johannesburg, South Africa.

On June 13, 2006, the director denied the petition, determining that the petitioner had failed to establish that the petitioner and the organization which employed the beneficiary in South Africa were qualifying organizations.

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 director's decision grossly misinterpreted the evidence, and failed to consider the entire evidence of record. In support of this contention, counsel submits a brief and additional evidence.

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 organization are qualified organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The regulation 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.

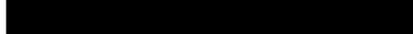
Additionally, the regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

- (I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries.
- (J) "Branch" means an operating division or office of the same organization housed in a different location.
- (K) "Subsidiary" means 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.
- (L) "Affiliate" means
 - (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
 - (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or
 - (3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under

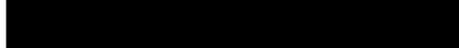
an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

In this case, the petitioner claims that the South African entity, Curzon Productions (Pty) Ltd. d/b/a Curzon Products (Pty) Ltd., owns 51% of the U.S. entity and, thus, the two entities have a parent-subsidiary relationship.

In support of the petition, the petitioner submitted a letter dated December 2, 2005, claiming that the foreign entity owned 51% of the petitioner. In support thereof, the petitioner submitted its Articles of Incorporation, signed on September 5, 1997, which indicated that it was authorized to issue 20,000 shares of common stock without par value. The petitioner also submitted a document entitled "Written Resolution of Sole Director" dated August 21, 1998, which indicated that the petitioner's stock would be distributed as follows:

	5,100 shares	\$10,200
	4,900 shares	\$ 9,800

Also submitted was a document entitled Written Resolution of Directors and Shareholders dated September 2 and September 3, 1998, which resolved that the parties transferred their shares to each other, such that the new ownership composition was reversed as follows:

	4,900 shares
	5,100 shares

Undated stock certificates (number 3 through 7) were also submitted in support of this ownership claim.

Additionally, the petitioner's 2003 IRS Form 1120, U.S. Corporation Income Tax Return, was submitted, which indicated on Line 5 of Schedule K that "Tembalami Trust, c/o JG Trustees, Ltd.," not Curzon Products, was the majority owner of the petitioner.

Noting this discrepancy, the director issued a request for evidence on February 15, 2006. In the request, the director specifically required the petitioner to submit evidence clarifying this inconsistency, and specifically requested certified documents to support its contentions. In a response dated May 9, 2006, the petitioner responded to the director's request, advising that due to a CPA error, tax returns had been erroneously claiming that Tembalami, not Curzon Products, was the majority owner of the petitioner. The petitioner submitted Form 1120X, Amended U.S. Corporation Income Tax Return, for the tax years ending August 2004 and August 2005. A letter from the petitioner's accountant accompanied these forms in which the accountant claimed that she had been unaware of a change of ownership. The petitioner submitted copies of

its stock certificates 3, 4, 6, and 7 and stated that the final two certificates reflect the current ownership of the company.

Upon review of the evidence submitted, the director concluded that the amended tax returns were insufficient to establish that Curzon Products was the majority owner of the petitioner. Noting that the share certificates contained in the record were not dated, the director found that without additional independent evidence, the certificates and the ledger alone were insufficient to support the petitioner's contentions. The director also rejected the amended tax returns, finding that the statement from the petitioner's CPA claiming error on her part, coupled with the fact that the documents were created in response to the director's request for evidence, were of little evidentiary value. The director subsequently denied the petition on June 13, 2006.

Counsel for the petitioner appealed the decision, asserting that the director's rejection of the amended tax returns constituted gross error. In addition, counsel alleged that the evidence in the record was sufficient to establish that a qualifying relationship existed, and claimed that the director's denial of the petition, as a result of ignoring the totality of the evidence, was improper. Finally, counsel claims on appeal that the petitioner had demonstrated a qualifying relationship by a preponderance of the evidence, and therefore should be afforded the benefit sought.

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*, 19 I&N Dec. at 595.

Upon review of the record of proceeding, the petitioner has not established that it has the required qualifying relationship with the South African entity.

In this case, the petitioner has provided documentary evidence outlining the shareholder interests in the U.S. entity, and has supplemented this evidence with explanatory statements which discuss the percentages of shareholder ownership and the transfers that took place during the course of the corporation's duration. The petitioner claims that by examining the stock ledger and stock certificates submitted, it is clear that although the petitioner was initially the minority shareholder of the petitioner with a 49% interest, the ownership interests were transferred in September of 1998 and that as a result thereof, the South African entity became the majority owner of the petitioner.

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.

While the petitioner in fact submitted many of the above documents, there are numerous inconsistencies contained therein that are not clarified in the record or addressed by the petitioner. The first document evidencing the issuance of shares in the petitioner is the Written Resolution of the Sole Shareholder, dated August 21, 1998. This document claims that Tembalami Trust would receive 5,100 shares in consideration of \$10,200, and that Curzon Products would receive 4,900 shares in exchange for \$9,800. The stock ledger, however, contains no evidence of this stock issuance, which would appear, based on the documents submitted, to be the original issue. The evidence submitted with the initial petition shows that stock certificate number 1 for 4,900 shares was issued on November 7, 1997, while number 2 for 5,100 shares was issued on the same date to the Tembalani Trust.

The stock ledger claims that the original stock was issued on January 20, 1998, with Tembalami Trust receiving 5,100 shares in consideration of \$10,200, and that Curzon Products received 4,900 shares in exchange for \$9,800. However, no meeting minutes or shareholder resolutions document this transaction, and there is no entry in the ledger to incorporate the resolution of August 21, 1998 or the November 1997 stock issuance. The ledger further indicates that two days later, on January 22, 1998, Curzon Products, the claimed foreign employer, transferred 4,900 shares to Curzon *Productions*. The next transactions, as documented in the ledger and affirmed by the Written Resolutions of the Directors and Shareholder, claim that Curzon *Productions* transferred these 4,900 shares to Tembalami, and in exchange it received Tembalami's 5,100 shares. Share certificates 6 and 7 evidence this ownership breakdown.

The question that arises from this interim transaction is the role of Curzon Products, the claimed foreign employer and the entity with which the qualifying relationship is claimed, versus Curzon *Productions*. The record contains a financial statement for the fiscal year ending February 29, 2004 which states that "Curzon *Productions*" is trading under the name "Curzon Products." However, this fact does not explain why a formal transfer, logged into the transfer ledger, indicates that Curzon *Productions* received all of the shares belonging to Curzon Products on January 22, 1998. If the two companies are one and the same, there appears to be no reason for a separate transaction such as this to be logged into the ledger. The petitioner has failed to clarify this inconsistency.

Most importantly, however, is the fact that there is no discussion or explanation as to why the original stocks issued, according to the ledger, are on share certificates 3 and 4, and not 1 and 2. This inconsistency is particularly relevant because certificates 1 and 2, dated November 7, 1997, are in fact contained in the record and demonstrate that Tembalami Trust owns 5,100 shares and Curzon Products owns 4,900 shares of the petitioner. 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).

This conflicting evidence raises serious doubts with regard to the claims of the petitioner. Prior to considering the amended tax returns, it seems apparent that the question of ownership is unresolved and cannot be ascertained, as counsel claims, by a "preponderance of the evidence." In fact, these serious inconsistencies raise doubts with regard to the validity of all documentation submitted in the record. 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. at 591. If Citizenship and Immigration Services (CIS) fails to believe that a fact stated in the petition is true, CIS may reject that fact. See e.g. *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).

Despite counsel's continued claims that the petitioner and the foreign entity have a parent-subsidary relationship, further review of the record raises even more questions pertaining to the validity of this claim. For instance, the 2004 South African tax return for the foreign entity asks on page 12, question 9, under the heading "International Related," whether "the company [has] foreign incorporated shareholders, non-resident international shareholders, interest in foreign incorporated companies, foreign branches, foreign partnerships or other business ventures or foreign incorporated or foreign tax resident connected persons of which it forms part." (Emphasis added). In response to this question, the foreign entity answered "no."

Additionally, despite the fact that amended tax returns were submitted after the director noted that Tembalami, and not Curzon Products, was listed as the majority shareholder for the petitioner, these documents, as correctly stated by the director, bear little evidentiary weight. 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). When responding to a request for evidence, a petitioner cannot make material changes to a petition to conform to a deficiency identified by the director. 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). While such documentation, when submitted in good faith as evidence to clarify an instantly recognizable mistake, would normally be considered in support of the petitioner's claim, it raises significant questions regarding the veracity of the petitioner's claims in this matter. If, as claimed in the record, the ownership of the petitioner changed in 1998, it is hard to believe that for over six years the petitioner's tax returns have been filed incorrectly without the petitioner's awareness of the purported error. Coupled, as counsel notes on appeal, with the "totality of the evidence," the amended returns appear to be an attempt to perpetuate an ongoing falsehood.

The evidence in the record is not persuasive that the foreign employer, Curzon Products, is the majority owner of the petitioner. Counsel urges the AAO to accept share certificates 6 and 7 as evidence of the current ownership of the petitioner. Although certificate number 7 indicates that Curzon Productions is the owner of 5,100 shares, this certificate, which is supported by the stock ledger, contradicts the original tax returns, and further contradicts the amended tax returns which claim that Curzon *Products* is the petitioner's majority owner. While it is noted that the record contains evidence to support a finding that Curzon Products and

Curzon Productions are in fact the same entity, the petitioner's failure to clearly outline the relationship between the two entities and its interchangeable use of the two names on the share certificates, is confusing and raises questions with regard to the nature of their relationship. 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. at 591. This inconsistency, coupled with the totality of the evidence and the other contradictions therein, precludes the AAO from concluding that a qualifying relationship exists in this matter.

Finally, the AAO wishes to explore the ownership interests set forth on share certificates 1 and 2. These certificates, dated November 7, 1997, indicate that Curzon Products owns 4,900 shares of the petitioner and that Tembalami Trust owns 5,100 shares of the petitioner. The stock ledger makes no reference to certificates 1 and 2, and claims that certificates 3 and 4 represent the original stock issuance. Clearly, this is a glaring contradiction not acknowledged or addressed by the petitioner, and again raises serious doubts regarding the legitimacy of the petitioner's claims. It suggests that either: (1) the petitioner fabricated the ledger to conform with CIS requirements; or (2) the petitioner in fact issued all of its 20,000 shares, and each party owns an equal share in the petitioner, and that certificates 1, 2, 6 and 7 should be considered when analyzing the petitioner's ownership. Either way, the bona fide ownership of the petitioner is impossible to ascertain based on the information submitted, and these unexplained discrepancies undermine the reliability of the remaining evidence offered in support of the visa petition. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

The profusion of inconsistencies contained in the record renders it impossible for the AAO to determine that the petitioner is a subsidiary of the claimed foreign employer. The AAO, therefore, concurs with the director's finding that the petitioner has not established that the U.S. and South African entities have a qualifying relationship as defined by the regulations. For this reason, the appeal will be dismissed.

It is further noted that the petitioner in this matter filed four prior L-1A petitions on behalf of the beneficiary, three of which were approved. 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).

Beyond the decision of the director, the record does not contain sufficient documentation to persuade the AAO that the beneficiary has been or would be employed in a position that requires specialized knowledge, as required at section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15). Although the petitioner asserts that the beneficiary's position requires specialized knowledge, the petitioner has not articulated any basis to the claim that the beneficiary is employed in a capacity requiring specialized knowledge. Other than submitting a general description of the beneficiary's job duties, the petitioner has not identified any aspect of the beneficiary's position which involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the position of "custom product and service specialist" at other employers within the industry. Nor does the claim that the beneficiary is familiar with South African designs, without more information regarding what sets apart the beneficiary's knowledge from others who have a similar familiarity with such items, demonstrate the beneficiary's qualifications for the requested visa classification. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990). For this additional reason, the petition cannot be approved.

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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.