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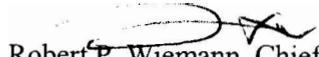
IN RE: Petitioner:
Beneficiary:

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-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, a corporation organized under the laws of the State of California, states that it is an import/export business and alleges a qualifying relationship with [REDACTED] located in Peru. The petitioner seeks to employ the beneficiary as the president of its new office in the United States for a one-year period.

The director denied the petition on September 28, 2006, concluding that the petitioner had failed to establish that the U.S. company and the organization which employed the beneficiary in Peru are qualifying organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The director found insufficient evidence to establish that the claimed parent company had actually purchased its claimed interest in the U.S. entity.

The petitioner subsequently filed a timely appeal on October 25, 2006. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On the Form I-290B Notice of Appeal, counsel for the petitioner states the following:

Petitioner satisfied the requirements of the law and regulations and met its burden of proof with respect to the Parent-Subsidiary relationship. We request that the evidence submitted be reconsidered, and that the case be reopened in order to consider additional previously unavailable evidence on this single point, which was the only basis for denial.

Counsel indicated that he would send a brief and/or evidence to the AAO within 30 days. As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile on April 6, 2007 to request that counsel acknowledge whether the brief and/or evidence were timely submitted, and, if applicable, to afford counsel an opportunity to re-submit the documents. Counsel has confirmed that he did not file a brief or evidence in support of the appeal.

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.

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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Counsel's general objections to the denial of the petition, without specifically identifying any specific errors on the part of the director, are simply insufficient to overcome the legally supported conclusions the director reached based on the evidence submitted by the petitioner. 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).

Contrary to counsel's assertion, the petitioner has not met its burden of proof with respect to establishing the claimed parent-subsidiary relationship between the U.S. and foreign entities. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

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, 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.

In this matter the petitioner claims that all 1,000 shares of its authorized stock were issued to the alleged foreign parent company, [REDACTED]. The petitioner submitted a copy of its stock certificate number 1, which identifies the petitioner, [REDACTED] by name, but includes the following statement:

This Certifies that [REDACTED] is hereby issued One Thousand (1,000) fully paid and non-assessable shares of Common Stock of Inter-Continental Trading, Inc. transferable on the books of the Corporation by the holder. . .

The petitioner re-submitted this same stock certificate in response to the director's request for additional evidence, yet made no attempt to explain why another, apparently unrelated company would be named on its

stock certificate. 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). The stock certificate alone has little probative value.

In support of the initial filing, the petitioner also submitted a copy of its bank statement for the month of June 2005, which reflects two \$5,000 deposits on June 28, 2005. The petitioner did not explain the source of the funds.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership 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. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

In this case, the director issued a request for evidence on August 30, 2006 instructing the petitioner to provide: proof of stock purchase by the foreign entity, including copies of original wire transfers, if applicable; copies of canceled checks, deposit receipts, bank statements detailing monetary amounts for the stock purchase, and clearly documenting that the parent company paid for the stock ownership; a copy of the U.S. company's stock ledger showing all stock certificates issued to the present date including total shares of stock sold, names of shareholders, and purchase price; and a copy of the U.S. company's Notice of Transaction Pursuant to Corporations Code Section 25012(f) showing the total offering amounts.

In a response dated September 18, 2006, the petitioner submitted an un-notarized "affidavit" from the beneficiary, who states that he received \$9,000 from the accounting department of the claimed parent company in July 2004, entered the United States on August 16, 2004, and deposited the amount of \$9,000 into the petitioner's bank account on June 28, 2005. The petitioner did not submit any corroborating evidence such as records from the foreign entity's accounting department, a copy of the foreign entity's bank statement confirming the withdrawal of the funds, or a canceled check or deposit receipt from the U.S. bank. As noted above, the petitioner's bank statement shows two separate \$5,000 deposits on June 28, 2005, rather than a \$9,000 deposit. The petitioner also failed to submit a copy of its stock transfer ledger, or its Notice of Transaction, which would confirm the monetary amount received for the stock offering. 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)). 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).

The petitioner has not submitted evidence on appeal to overcome the director's conclusion on this issue. Accordingly, the appeal will be summarily dismissed.

Beyond the decision of the director, the record does not contain evidence: describing the scope of the proposed U.S. entity, its organizational structure, and its financial goals; or showing the size of the United States investment, the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States, as required by 8 C.F.R. § 214.2(l)(3)(v)(C). Accordingly, the record does not persuasively demonstrate that the beneficiary would be employed in a primarily managerial or executive capacity within one year. For these additional reasons, the appeal must be dismissed and the petition denied.

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).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 support of the appeal, the petitioner has not sustained that burden, and, pursuant to 8 C.F.R. § 103.3(a)(1)(v), the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.