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U.S. Citizenship
and Immigration
Services

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File: SRC 02 051 51621 Office: TEXAS SERVICE CENTER Date: JUN 04 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, 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 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 Florida corporation, claims that it is a subsidiary of Organizacion de Seguros Barranquilla Ltda (OSB), located in Colombia. The petitioner states that it is engaged in real estate investment and the operation of a dry cleaning business. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States for a two-year period.

The director denied the petition concluding that the petitioner did not establish that the U.S. company and the foreign company have a qualifying relationship.

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 petitioner's former counsel "failed to adequately demonstrate" the ownership structure for the U.S. and foreign entities. Counsel asserts that the foreign entity owns a 51 percent interest in the U.S. company, thus establishing a qualifying parent-subsidiary relationship. Counsel submits a brief and documentary evidence in support of 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 regulation at 8 C.F.R. § 214.2(l)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(i)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The sole issue addressed by the director is whether the petitioner has established that a qualifying relationship exists between the U.S. company and the beneficiary's overseas employer. 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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means 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[.]

* * *

- (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.

The nonimmigrant petition was filed on December 3, 2001. The petitioner indicated on Form I-129 that the U.S. company is a subsidiary of Organizacion de Seguros Barranquilla. The petitioner also submitted evidence that its articles of incorporation were filed in Florida on May 21, 2001. The petitioner did not provide evidence of the ownership or control of the U.S. company.

The petitioner did provide copies of ten wire transfer receipts for deposits made to two bank accounts apparently belonging to the petitioning company between June 2001 and October 2001, as well as wire transfer request receipts for two transfers made on October 4, 2001. The beneficiary appears to have requested a wire transfer in the amount of \$3,675.88 from an unknown account, while a Gabriel Barrios Castro appears to have requested a transfer of \$7,459.76 on behalf of the claimed foreign parent company. The petitioner also submitted a "payment confirmation" for a customer transfer of \$15,080.51 to the petitioner's account "by order of [the beneficiary]." The wire transfer receipts were not accompanied by any explanation from the petitioner.

The director issued a request for additional evidence on January 17, 2002, in part requesting that the petitioner submit documentary evidence to establish the ownership and control of both the foreign and United States entities. The director noted that such evidence could be in the form of stock certificates, copies of corporate bylaws/constitutions which clearly indicate stock ownership, or copies of published annual reports. The director also requested copies of stock certificates and stock ledgers for both the U.S. and foreign entities, a copy of the petitioner's articles of incorporation, and evidence of the foreign entity's incorporation.

In a response dated April 3, 2002, the petitioner submitted a copy of a stock certificate issued to the beneficiary on March 19, 2002. The name of the issuing company and the stock certificate number are illegible. The certificate indicates that the beneficiary was issued "25%" of the corporation's stock. The petitioner also submitted the U.S. company's articles of incorporation filed on May 21, 2001, which indicate that the company is authorized to issue 7,500 shares with a par value of \$1.00. Article VII indicates that the foreign entity is a 51% stockholder, the beneficiary is a 25% stockholder and another individual is a 24% stockholder. The petitioner did not submit copies of its other stock certificates, nor did it provide a copy of the company's stock register. The petitioner submitted a Certificate of Good Standing and Legal Representation for the foreign entity, establishing that it is owned by three individuals.

The petitioner's response to the director's request also included a business plan for the petitioner, which addressed the company's ownership as follows: "The corporation is capitalized with approximately \$165,600. Fifty-one shares of the corporation are owned by [the beneficiary]."

The director denied the petition on August 29, 2002, concluding that the petitioner had failed to establish the existence of a qualifying relationship between the U.S. and foreign entities. The director acknowledged receipt of the partially illegible stock certificate indicating the beneficiary's minority ownership in the company, but found insufficient evidence to corroborate the petitioner's claim of majority ownership by the claimed parent company.

On appeal, counsel for the petitioner asserts that former counsel failed to adequately demonstrate the ownership structure between the foreign and U.S. companies, as she submitted only one share certificate in response to the director's request for evidence. Counsel asserts that the foreign entity is the owner of 510 shares of common stock representing a 51 percent interest in the U.S. company.

In support of the appeal, the petitioner submits a copy of a Unanimous Written Consent of The Sole Director and Shareholders of the petitioning company, in which it was resolved that the company's common stock would be issued as follows:

- Certificate No. 1 [REDACTED] the beneficiary], 250 shares
- Certificate No. 2 [REDACTED] 240 shares
- Certificate No. 3 Organizacion de Seguros Barranquillas, Ltda, 510 shares

The Unanimous Written Consent is dated "effective as of May 21, 2001." The petitioner also submits copies of the petitioner's stock certificates numbers one through three, confirming the ownership structure outlined above. All three stock certificates are dated March 19, 2002. The petitioner has also annotated stock certificates number one to indicate the number of shares issued as "25% (Two Hundred & Fifty Stocks)." Finally, the petitioner submits a copy of its stock transfer ledger, which confirms the same ownership structure, but indicates that each stockholder assumed ownership of the stock in May 2001.

Upon review, the petitioner has not established that the U.S. company and the foreign entity have a qualifying relationship. 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 company, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, U.S. Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

Preliminarily, the AAO notes that due to the petitioner's failure to submit copies of all of its issued stock certificates and stock ledger as specifically requested by the director, the petition was properly denied. 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).

Although the petitioner has supplemented the record on appeal, the AAO notes deficiencies and inconsistencies in the record which preclude a determination that the petitioner is a qualifying subsidiary of the foreign entity. First, the petitioner's business plan, which was presumably prepared by the petitioning company with full knowledge of the company's actual ownership, identifies the beneficiary as the majority owner of the petitioning company, and makes no reference to 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). This discrepancy has not been resolved.

Second, the AAO notes that although the petitioner claims that its stock was issued and the company was capitalized in May 2001, the petitioner's stock certificates are dated in March 2002, and were not issued until two months subsequent to the director's request for evidence of the company's ownership. The petitioner's stock transfer ledger indicates that the stock was issued in May 2001, and the petitioner has provided no explanation for the apparent ten month delay in issuing the certificates. 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)).

Finally, as ownership is a critical element of this visa classification, the AAO may reasonably look beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. 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.

The evidence submitted does not clearly show that the foreign entity paid for its interest in the petitioning entity. Although the petitioner has submitted evidence of a number of wire transfers deposited into the U.S. company's account, only one of these deposits can be traced to the foreign entity. Accordingly, this evidence is not sufficient to corroborate the petitioner's claims of majority ownership by the foreign entity.

Based on the foregoing discussion, the petitioner has not established that the U.S. and foreign entities have a qualifying relationship. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the AAO notes that the record does not contain evidence that the petitioner had secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A). The petitioner indicates a business address of 7220 N.W. 36 Street, Suite 637, Miami, Florida, but has not submitted evidence that it leases or owns property at this address. The petitioner did provide evidence that it purchased a condominium as an investment in July 2001; however, the petitioner does not claim that it will use the investment property as an office. The petitioner also states that it invested in a dry cleaning business in September 2001, but submitted no documentation related to this business or its premises. 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. at 165. For this additional reason, the petition cannot be approved.

Finally, although not addressed by the director, the petitioner has not submitted sufficient evidence to establish that the beneficiary would be employed by the petitioner in a primarily managerial or executive capacity within one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C). The petitioner indicated on Form I-129 that the beneficiary would serve as general manager of the new office and would occupy the "senior management position involved in client contracts & business negotiations." The petitioner did not submit a supporting letter further describing the beneficiary's proposed duties or the type of business to be operated by the petitioner, nor did it submit a business plan outlining the proposed nature, scope, organizational structure and objectives of the new office. The petitioner claimed to employ five employees and submitted copies of Forms I-9, Employment Eligibility Verification, for five individuals, dated between July and September 2001.

In the request for evidence issued on January 15, 2002, the director requested: (1) a description of the beneficiary's duties and the percentage of time she would spend on each duty; (2) an explanation regarding the petitioner's proposed staffing level as of the end of the first year of operations, including position titles and proposed duties for all anticipated employees; and (3) a proposed business plan. In response, the petitioner re-submitted copies of its Forms I-9, and provided a one and a half page business plan. The petitioner did not provide the requested job description for the beneficiary or detailed information regarding its proposed staffing structure for the first year of operations. 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). Absent a detailed job description for the beneficiary, the AAO cannot determine that the beneficiary would be employed in a primarily managerial or executive capacity.

According to the business plan, the company will initially focus on the operation of a dry cleaning establishment in which the petitioner claims to have made an investment. The business plan indicates that the company will require a receptionist to answer the telephone, provide customer service, and receive and sort clothes, two iron pressers, and a general manager "to manager [sic] the operations." Based on this proposed organizational structure it appears that the beneficiary's role would be as a first-line supervisor of non-professional personnel engaged in providing dry cleaning services. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). Although the business plan references the petitioner's intent to purchase, remodel and re-sell real estate, the business plan does not outline the beneficiary's role or any proposed staff relative to this area of the business. Again, 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. at 165.

The AAO acknowledges the petitioner's submission of copies of five Forms I-9 in support of the petitioner's claim that it employed five workers as of the date of filing. Any CIS Forms I-9 presented by a petitioner must be accompanied by other evidence to show that these employees have commenced work activities. Forms I-9 verify, at best, that a business has made an effort to ascertain whether particular individuals are authorized to work; they do not verify that those individuals have actually begun working. *See Matter of Ho*, 22 I&N Dec. 206, 212 (Assoc. Comm. 1998). In the absence of such evidence as pay stubs and payroll records, the petitioner has not established that the petitioner employs a subordinate staff that would relieve the beneficiary from performing non-qualifying duties. Regardless, as discussed above, the petitioner has declined to provide the requested evidence regarding the job titles and job duties of the company's claimed employees.

Based on the foregoing discussion, the petitioner has not established that the U.S. company would employ the beneficiary in a primarily managerial or executive capacity within one year of commencing operations in the United States. 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 he 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 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.