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U.S. Citizenship  
and Immigration  
Services

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File: SRC 02 173 52202 Office: TEXAS SERVICE CENTER Date: JUN 04 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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 extend the employment of 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 describes itself as a Texas limited liability company engaged in the operation of fast food restaurants. The petitioner states that it has a qualifying relationship with the beneficiary's former employer [REDACTED] located in Juarez, Mexico. The petitioner has employed the beneficiary in L-1A status since May 1999 and now seeks to extend his status for two additional years.

The director denied the petition concluding that the petitioner did not establish that the U.S. entity and the foreign entity 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, the petitioner concedes that its response to the director's request for evidence did not clearly state the ownership of the foreign and U.S. companies. The petitioner submits additional documentary evidence in support of the appeal in an attempt to establish the claimed qualifying relationship.

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 sole issue addressed by the director is whether the petitioner has established that a qualifying relationship exists between the petitioner and the beneficiary's previous foreign 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).

Pursuant to the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(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; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii) provide the following definitions for purposes of establishing a qualifying relationship.

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

\* \* \*

- (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.

The nonimmigrant petition was filed on May 13, 2002. On the Form I-129, the petitioner stated that it is the parent of the foreign entity, which was identified as [REDACTED]. In an attached letter dated April 19, 2002, the petitioner stated that it is a qualifying organization as defined at 8 C.F.R. § 214.2(l)(1)(ii)(G) and explained as follows:

El Taco Tote is a limited liability company which operates under the trade name of [REDACTED], located in El Paso, Texas and under the register Trade Name of [REDACTED] located in El Paso, Texas, Cd. Juarez, Chihuahua, Nuevo Laredo and Durango, Mexico.

The petitioner stated that "[REDACTED]" was established as a Texas limited liability company on August 24, 1994. However, the petitioner indicated its name on Form I-129 as "[REDACTED]" while the petitioner's letter identifies the company's name as "[REDACTED]". The petitioner did not submit evidence of the ownership of the U.S. or foreign entity with the initial petition filing.

The director issued a request for additional evidence on May 22, 2002. In part, the director requested evidence of a qualifying relationship between the foreign and United States companies, and evidence that the foreign corporation is currently doing business.

In a response received on or about June 22, 2002, the petitioner provided the following statement from the beneficiary:

This business is a family owned business that belongs to us, us meaning I along with my six brothers in wich [sic] we are all diferent [sic] sized share holders of our businesses.

My brother [REDACTED], and I are the only two equal shareholders of our business in Torreon Coahila [Mexico] of wich [sic] I provided picture and official documents of. Whowever [sic], this business is under my wife's name but my brother and I both take trips down there to check on the business. Sometimes we go together and sometimes we alternate turns. We also have a General Manager for both of us to check up with incase we're not able to go.

The businesses that are located in Cd. Juarez, Chiuaha [sic], [Mexico] belong to my other brothers. In this same city we hold weekly meetings in wich [sic] all of us get together and talk about matters that concern all of our businesses (Torreon Mex, Cd. Juarez, Nuevo Laredo Tamps, Laredo Tx and El Paso, Tx.) We have these weekly meetings to look at any matters situations or goals any of our businesses might have in mind or simply have to meet.

The petitioner submitted copies of IRS Forms 1065, Return of Partnership Income, for [REDACTED], for the 2000 and 2001 years. The Forms 1065 indicate that the U.S. company is a limited partnership

with five partners, started on October 1, 1997. The Schedules K-1, Partner's Share of Income, Credits, Deductions, etc." indicate ownership of the company as follows:

[REDACTED]	44.55%
[REDACTED]	24.75%
[REDACTED]	19.80%
[REDACTED]	9.9%
[REDACTED]	1%

The petitioner also submitted a copy of the 2001 Form 1065 with Schedules K-1 for Montaco, LLC, which indicates the following ownership structure: [REDACTED] (45%); [REDACTED] (25%); [REDACTED] (20%); and [REDACTED] (10%).

In addition, the petitioner submitted numerous documents that appear to have been provided as evidence that the foreign entity continues to do business in Mexico. All of the documents are in the name of "[REDACTED]". Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The director denied the petition on June 28, 2002, concluding that the petitioner had failed to establish that there is a qualifying relationship between the U.S. and foreign entities. The director noted that the petitioner's response to the request for evidence indicated that the ownership of the U.S. company is different from that of the foreign entity. However, the director found insufficient documentary evidence to clearly show the ownership of the U.S. business, and noted that the regulations require that the petitioner establish the ownership of both companies in order to establish the qualifying relationship.

On appeal, the petitioner submits the following statement on Form I-290B, Notice of Appeal:

I am submitting additional evidence to show the qualifying relationship between the foreing [sic] and United States companies. Our response to a previous inquiry did not clearly state the ownership of the companies, which we hope we have have [sic] done with the attached evidence.

In an accompanying letter dated July 13, 2002, the petitioner emphasizes that "El Taco Tote" is a registered trademark in the United States and Mexico, but notes that the individual businesses owned by the beneficiary and his brothers "are all under different names in both the U.S. Government and the Mexican Government."

In support of the appeal, the petitioner submits:

- A certificate of registration for the U.S. Patent and Trademark Office for the "[REDACTED]" service mark;
- A copy of the company regulations for [REDACTED], a Texas limited liability company established May 5, 2000, which indicates, at Exhibit B, ownership as follows:

██████████ (50%) ██████████ (30%), ██████████ (10%) and ██████████ (10%);

- A membership certificate number four for ██████████ issuing a 10% ownership interest to ██████████ on May 5, 2000;
- A copy of the limited partnership agreement of ██████████, dated May 30, 2002, which indicates at article 2.8 that is an "amended and restated Partnership Agreement from May 15, 2000, which is superseded in its entirety." The partnership agreement identifies the same ownership structure outlined in the company's Forms 1065, Schedule K, referenced above, and indicates that ██████████ is the general partner.
- A Spanish-language document identified as "Legal documentation of our business in Cd. Juarez, [Mexico], being registered as ██████████. The document appears to reference a company called "██████████" registered in Mexico in February 1991.

Upon review, the petitioner has not established that there is a qualifying relationship between the petitioner and the beneficiary's foreign employer. The regulations and case law confirm that the key factors for establishing a qualifying relationship between the U.S. and foreign entities are "ownership" and "control." *Matter of Siemens Medical Systems, Inc.* 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); *see also Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct and 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.

Preliminarily, the AAO notes that the director properly denied the petition based on the petitioner's failure to submit the documentary evidence to establish a qualifying relationship in response to the director's request. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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 submitted confusing information regarding the name of the petitioning company and its date of establishment. The petitioner initially described itself as a Texas limited liability company established in August 1994, and represented its registered name as "██████████." At the same time, the petitioner submitted corporate tax returns for a limited partnership, "██████████," which indicate that this company commenced operations in October 1997. On appeal, the petitioner submitted a May 15, 2002 partnership agreement for ██████████ which references an earlier agreement made on May 15, 2000. It is unclear how this company relates to the Texas limited liability company established in 1994. Finally, the petitioner has introduced evidence on appeal related to a Texas limited liability company formed in May 2000, ██████████ but has not adequately explained the purpose for submitting such evidence. 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).

Notwithstanding the petitioner's inconsistent statements regarding the U.S. company, based on a review of the submitted federal quarterly tax returns and state quarterly wage reports, [REDACTED] appears to be the beneficiary's U.S. employer and the AAO will focus on the ownership of this company to determine whether the petitioner has established a qualifying relationship with the foreign entity. The corporate tax returns and partnership agreement for this company suggest that it was owned by four individuals and one company at the date of filing, with no individual shareholder holding a majority interest in the company.

With respect to the foreign entity, the petitioner has submitted conflicting evidence regarding the company's name and ownership structure. In response to the director's request for evidence, the petitioner stated that the foreign entity that employed the beneficiary is owned in equal part by the beneficiary and his brother, Jorge Heras. At the same time, the petitioner stated that the business is registered under the beneficiary's spouse's name. As noted above, the petitioner did not submit probative evidence of the ownership of this business, as the documents submitted were not translated. *See* 8 C.F.R. § 103.2(b)(3).

On appeal, the petitioner submits evidence to establish the ownership of "[REDACTED] Company," which does not appear to be the same foreign business referenced in the petitioner's response to the request for evidence. Again, because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and need not be accorded any weight in this proceeding. Nevertheless, although the petitioner stated that the beneficiary and his brother equally owned the foreign entity that employed the beneficiary, the beneficiary is not identified as a shareholder of [REDACTED].

Again, 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. at 591-92. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. The record does not clearly identify the name and ownership of the entity that employed the beneficiary prior to his transfer to the United States.

While it appears there may be some common ownership and control between the United States and foreign entities, the petitioner has not established that one individual or parent company owns a majority interest in both companies, or that the same group of individuals owns and controls both companies, with each individual owning and controlling approximately the same share or proportion of each entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). The fact that the owners of the various U.S. and Mexican companies operating under the [REDACTED] name are members of the same family is insufficient to establish an affiliate relationship between the companies for the purpose of this visa classification. Rather, the critical elements of ownership and control must be considered. *Matter of Siemens Medical Systems, Inc.* 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982);

Based on the incomplete and inconsistent documentation in the record, the petitioner has not demonstrated that the petitioner and the beneficiary's foreign employer have a qualifying relationship. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has submitted insufficient evidence to establish that the beneficiary would be employed by the petitioner in a primarily managerial or executive capacity under the extended petition. The petitioner initially indicated that the beneficiary, as general manager, is responsible for implementing production processes, directing all departments, developing and coordinating the franchises and each of their assistant managers, recruiting assistant managers and franchise managers, scheduling, performing daily income and financial responsibilities, and being responsible for the oversight of assistant managers and shift managers for all existing and future locations and operations in El Paso, Texas. The petitioner indicated that the beneficiary would supervise 35 employees. These duties suggested that the beneficiary may serve in a managerial capacity with responsibility for managing supervisory employees who, in turn, would be responsible for oversight of the lower-level workers operating the petitioner's restaurants.

However, when the director requested that the petitioner clarify how the beneficiary will serve in a managerial capacity, the beneficiary stated that his critical responsibilities include supervising bus boys, cashiers, a butcher, "tortilleras," and kitchen staff. The initial description of the beneficiary's duties suggests that he oversees the operations of several restaurants, while the beneficiary's later statement suggests that he is primarily involved in the first-line supervision of the non-professional workers of a single restaurant, duties which are not considered to be managerial in nature. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Based on this conflicting information, the AAO cannot determine the beneficiary's actual duties or level of authority within the company. Again, 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. at 591-92. For this additional reason, the petition will not be approved.

Finally, the AAO notes that the instant petition is a request for an extension of the beneficiary's previously approved L-1A status. The prior approval of an L-1A petition does not preclude U.S. Citizenship and Immigration Services (USCIS) from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). It must be emphasized that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

Moreover, if the previous nonimmigrant petition was approved based on the same unsupported and inconsistent assertions that are contained in the current record, the AAO finds that the director was justified in departing from the previous approvals by denying the present extension petition. 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. at 597. 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 (6<sup>th</sup> 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).

The petition will be denied 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.