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D-7

FILE: WAC 04 239 52250 Office: CALIFORNIA SERVICE CENTER Date: JUN 22 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:  
[Redacted]

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 dismissed.

The petitioner, a California corporation, claims to be engaged in software sales and support. It seeks to temporarily employ the beneficiary as a 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 claims to be the subsidiary of Legrand Software Pty Limited, located in North Sydney, Australia. On November 18, 2004, the director denied the petition, determining that the petitioner had not established that the petitioner maintained a qualifying relationship with the foreign organization.

Counsel for 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 qualifying relationship was not explained thoroughly in the initial petition, and that it did in fact exist at the time of filing in this matter. Counsel submits evidence in support of the claimed relationship on appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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) further 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.

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, on the L Supplement to Form I-129 and in a letter from the petitioner dated August 22, 2004, the petitioner claims that it is 100% owned by [REDACTED]. In support of this contention, a stock certificate and a document entitled "Authorization of Issuance of Shares" indicated that 2,500 shares were assigned to the foreign entity in exchange for \$1,000 in consideration. Page one of the petitioner's Articles of Incorporation, dated January 3, 2003, was also submitted, and this document indicated that 5,000 shares were authorized. No additional evidence was provided regarding the qualifying relationship.

In a request for evidence issued on October 5, 2004, the director provided a detailed list of evidence required to establish that a qualifying relationship existed between the parties. Specifically, the director requested evidence to establish that the foreign entity had in fact paid for its shares in the U.S. entity. The director indicated that acceptable evidence included copies of the original wire transfers, cancelled checks, or deposit receipts. In the event that any funds did not originate with the foreign entity, the director requested an

explanation regarding the source of the funds and the reason for using a third party to transfer funds, in addition to details regarding the account holders and their affiliations to the company. The director also requested a copy of the petitioner's annual report and most recent Security and Exchange Commission Form 10-K which listed all affiliates, subsidiaries and branch offices as well as their percentage of ownership. Finally, the director requested a copy of the minutes of shareholders' meetings that listed all shareholders and the number and percentage of shares owned by each member listed.

The petitioner submitted a response dated November 2, 2004. The petitioner submitted an incomplete copy of its Form 1120, U.S. Corporation Income Tax Return for the period from January 1, 2003 to June 30, 2003. In addition, it resubmitted the share certificate, the first page of its Articles of Incorporation, and the Authorization of Issuance of Shares. No annual report, 10-K form, or minutes of shareholder meetings were submitted, and the petitioner also failed to submit any financial documentation pertaining to the purchase of shares.

On November 18, 2004, the director denied the petition. The director found that after viewing the documentation submitted in response to the request for evidence, the petitioner had failed to establish that a qualifying relationship exists between the petitioner and the Australian entity. Specifically, the director observed that the petitioner did not provide the requested evidence to establish that the foreign company paid for its claimed ownership of the petitioning entity.

On appeal, newly-retained counsel for the petitioner contends that the relationship was simply not explained thoroughly prior to adjudication, and submits a brief and additional documentation in support of the contention that the qualifying relationship existed at the time of filing. Counsel explains the ownership of the foreign entity, and resubmits the previously-submitted documents such as the share certificate and the Authorization of Issuance of Shares as proof of the foreign entity's ownership of the petitioner. Finally, counsel submits copies of the petitioner's bank statements showing credits in the form of wire transfers from the foreign entity.

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 evidence submitted, the petitioner has not established that the foreign entity owns and controls 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.

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 matter, despite the director's clear request for evidence of the foreign entity's stock purchase, the petitioner failed and/or refused to submit such evidence. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. 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).

On appeal, counsel submits bank statements on appeal as evidence of the foreign entity's payment for its shares via wire transfers to the petitioner. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.<sup>1</sup>

Nevertheless, the record prior to adjudication contained major inconsistencies regarding the ownership of the petitioner. First, as discussed above, despite the submission of the stock certificate showing 2,500 shares issued to the petitioner, there were no minutes of shareholders' meetings to review to ensure that only 2,500 of the 5,000 shares authorized had been issued. Second, the petitioner's Form 1120, U.S. Corporation Income Tax Return, contains two confusing issues. First, Form 5472, Information Return of a Foreign-Owned U.S. Corporation, indicated that [REDACTED] was a 25% foreign shareholder of the petitioner. Counsel for the

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<sup>1</sup> While this evidence will not be considered in support of the appeal, the AAO notes that the bank statements submitted show that the wire transfers were initiated on November 3, 2003. However, the share certificate in the record indicates that the stock was issued on January 8, 2003, nearly ten months prior to the wire transfers. Even if this documentation were to be considered on appeal, there is nothing in the record to suggest that the transfer of these funds was related to the stock issued ten months earlier.

petitioner contends on appeal that the petitioner's filing of this document clearly establishes that the petitioner was a foreign-owned corporation. However, counsel overlooks the fact that Form 5472 names an individual, and not the foreign corporate entity, as the owner of the petitioner. A corporation is a separate and distinct legal entity from its owners or stockholders. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). While it is noted that [REDACTED] is a 50% owner of the holding company which owns the foreign entity, the fact remains that although the share certificate is issued to the foreign corporate entity, Form 5472 names [REDACTED] as the petitioner's 25% owner. 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).

Second, Line 22 of Schedule L indicated no monetary amount in the area for capital stock. This omission further casts doubt of the claims of the petitioner with regard to the qualifying relationship between the parties. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *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).

Based on the conflicting evidence submitted, the AAO cannot determine that a qualifying relationship existed between the parties at the time of the petition's filing. For this reason, the appeal will be dismissed.

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).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered position. 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 beneficiary 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 "technical support manager" at other employers within the industry. 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 may not 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 or 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.