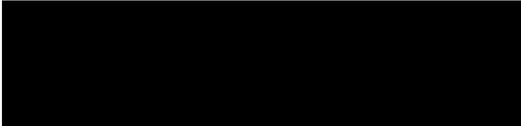




U.S. Citizenship  
and Immigration  
Services

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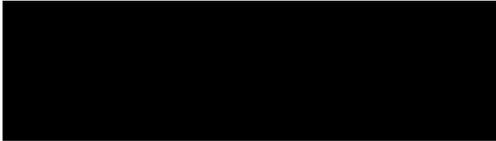
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File: EAC 05 215 52883 Office: VERMONT SERVICE CENTER Date: SEP 06 2007

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, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily 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 Virginia corporation, states that it is engaged in research and development. The petitioner claims to be an affiliate of Polaris Five Korea, Inc., located in Korea. The petitioner seeks to employ the beneficiary in the position of researcher in its new office for a one-year period.

The director denied the petition on November 14, 2005, concluding that the petitioner did not establish that the petitioner has a qualifying relationship with the foreign entity.

The petitioner subsequently filed an appeal on December 5, 2005. On the Form I-290B, Notice of Appeal, counsel for the petitioner states: "[The beneficiary] was improperly denied L-1 visa based upon the evidence submitted." Counsel indicated that he would forward a brief and/or additional evidence to the AAO within 30 days. As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile on July 31, 2007 to request that he acknowledge whether the brief and/or evidence were timely submitted, and, if applicable, to afford counsel an opportunity to re-submit the documents within five business days. The AAO has not received a response to its request. Accordingly, the record will be considered complete.

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:

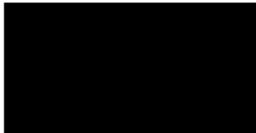
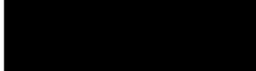
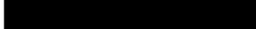
An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

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 errors on the part of the director, are simply insufficient to overcome the well-founded conclusions the director reached based on the evidence submitted by the petitioner. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Accordingly, the appeal will be summarily dismissed.

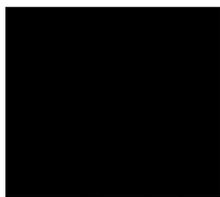
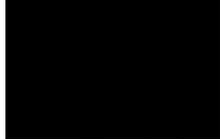
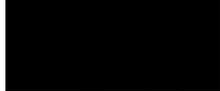
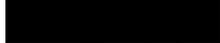
Contrary to counsel's statements, the evidence submitted with the petition did not establish that beneficiary's eligibility for this visa classification. To establish a "qualifying relationship" under the Act and the

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).

As noted by the director, the evidence submitted indicates that the U.S. company is owned by three individuals as follows:

	334 shares
	333 shares
	333 shares

The evidence indicated that the beneficiary's claimed foreign employer, , is owned as follows:

	2,000 shares
	2,000 shares
	2,000 shares
	2,000 shares
	2,000 shares

In response to the director's notice of intent to deny the petition, counsel for the petitioner argued that the petitioner and the foreign entity have a qualifying relationship due to common ownership. Counsel stated that the foreign entity is "owned by five stockholders including the same three stockholders of [the petitioner]," and is "similarly owned in equal shares." Counsel asserted that the two companies meet the definition of "affiliate" at 8 C.F.R. § 214.2(l)(1)(ii)(L)(2), because they are owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity." Counsel also referred to a joint venture agreement between Winpac, Inc., a Korean corporation with the same name as the petitioner, and the beneficiary's foreign employer, noting that the agreement establishes that the companies are contractually obligated to work together.

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.

Here, based on the petitioner's representations, the U.S. and foreign entities have only two owners in common, not three as claimed by counsel. Regardless, the companies do not have the degree of common ownership required to establish an affiliate relationship. In this case the U.S. entity is owned by three individuals and the foreign entity is owned by five individuals. No one shareholder or group of shareholders in either company has a majority interest or has otherwise been shown to exercise control over the company.

Absent documentary evidence such as voting proxies or agreements to vote in concert so as to establish a controlling interest, the petitioner has not established that the same legal entity, individual, or group of individuals control both entities. Based on the evidence submitted, the director properly concluded that no qualifying affiliate relationship exists.

As the director did not directly address counsel's reference to the joint venture agreement between Winpac, Inc. (Korea) and the beneficiary's foreign employer, the AAO will address this issue. The submitted joint agreement references the petitioning company, although the petitioner is not named as a party to the agreement.

Citizenship and Immigration Services (CIS) accepts the interpretation that a 50-50 joint venture creates a subsidiary relationship for purposes of section 101(a)(15)(L) of the Act. See 8 C.F.R. § 214.2(l)(1)(ii)(K). Neither the Act nor the regulations provides a definition of the term "joint venture." However, the AAO has applied a broad definition of joint venture in prior decisions. *Matter of Hughes* states that a joint venture is "a business enterprise in which two or more economic entities from different countries participate on a permanent basis." *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982) (quoting a definition from [REDACTED] *International Business Enterprise* (Prentice Hall, 1973)). *Matter of Siemens Medical Systems, Inc.* states: "Where each of two corporations (parents) owns and controls 50 percent of a third corporation (joint venture), the joint venture is a subsidiary of each of the parents." *Matter of Siemens Medical Systems, Inc.* 19 I&N Dec. 362, 364 (BIA 1986). In order to meet the definition of "qualifying organization," a joint venture must be formed as a corporation or other legal entity. 8 C.F.R. § 214.2(l)(1)(ii)(G). A business created by a contract as opposed to one created under corporation law is not be deemed a "legal entity" as used in section 101(a)(15)(L) of the Immigration and Nationality Act. *Matter of Hughes*, 18 I&N Dec. 289, 294 (Comm. 1982); see also *Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970).

In this case, there is no evidence of a "third corporation" or other legal entity formed by the petitioner and the beneficiary's foreign employer, and thus no evidence of a valid joint venture relationship for immigration purposes. The petitioner itself is not a joint venture company formed by Winpac (Korea) and the beneficiary's employer, as it is owned by three individuals. At most, the petitioner may have an indirect contractual relationship with the beneficiary's foreign employer, insufficient to establish a qualifying relationship for the purpose of this visa classification. However, the evidence of record does not demonstrate any common ownership and control between the Korean company known as WinPac, Inc. and the petitioner, which has the same name. 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)).

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.

**ORDER:** The appeal is summarily dismissed.