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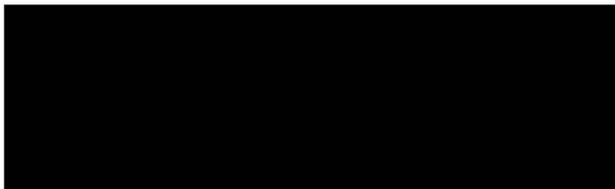
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U.S. Citizenship  
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Services

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File: EAC 07 056 50038 OFFICE: VERMONT SERVICE CENTER

Date: DEC 19 2008

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. The petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO), where a notice of adverse findings and request for additional evidence was issued. The petitioner has now provided a response, and all documents on record have been reviewed. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the United States in the position of director of operations and marketing 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 director denied the petition based on the finding that the beneficiary was not employed abroad for the requisite one-year period within the three years prior to the date the Form I-129 was filed.

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 argues that the director's denial is based on factual errors concerning the beneficiary's date of arrival to the United States.<sup>1</sup> An appellate brief has also been submitted and will be addressed in a full discussion to follow.

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.

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<sup>1</sup> The record shows that while the petitioner was previously represented by counsel, such counsel has recently submitted a letter dated November 20, 2008 withdrawing his representation of the petitioner in the present matter. While counsel's arguments and submissions have been considered, the petitioner is now considered to be self-represented.

- (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.

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office, 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 involved 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)(ii)(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 primary issue addressed in the director's decision is whether the beneficiary has the requisite one-year period of employment abroad during the three years prior to filing the Form I-129. In the present matter, the Form I-129 was filed on December 20, 2006. Therefore, the three-year time period during which the employment abroad should have taken place is from December 20, 2003 until December 20, 2006. As the AAO previously stated in a notice dated October 23, 2008, section 1, item 5 of the L Classification Supplement indicated that the beneficiary was employed abroad from January 1, 1998 until July 1, 2005. The AAO further pointed out that the photocopies of the beneficiary's numerous visa pages, which the petitioner submitted on appeal, show that the beneficiary was issued a B1/B2 U.S. visitor visa on at least four occasions during the time period of his alleged employment with the qualifying foreign entity. Furthermore, the annotation section on at least two of those visa pages indicates that the purpose of the beneficiary's U.S. visit was to serve as a personal attendant of [REDACTED]

Accordingly, in light of the factors mentioned above, the AAO instructed the petitioner to provide additional documentation to establish the beneficiary's employment with the foreign entity during the relevant time period. The AAO expressly informed the applicant that the additional evidence should include pay statements issued by [REDACTED] to the beneficiary within the relevant time period; Radico Heptulla International's payroll, naming the beneficiary among its

employees during the relevant time period; or the beneficiary's tax documents specifically naming his employer during the relevant time period.

Although the petitioner has responded to the notice, it has not provided any of the documents specifically listed by the AAO as an acceptable means of establishing the beneficiary's foreign employment. It is noted that 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). **Here, instead of providing the requested documents, the petitioner has provided five undated letters on [REDACTED] International's letterhead, accounting for the beneficiary's employment with that entity from December 20, 2003 through December 31, 2007. These letters are accompanied by documents entitled "Receipt," each containing a date, the designated month for which the beneficiary purportedly received a salary, and the amount of the salary. Combined, the receipts accounted for each month within the time period indicated in each of the five letters of employment.**

After reviewing the above documents the AAO finds that they are not persuasive and that they fail to establish the beneficiary's employment abroad during the time period initially claimed. First, the AAO observes that the letters of employment account for time periods that extend beyond July 2005, indicating that the beneficiary was employed by the foreign entity throughout all of 2005, 2006 and 2007. This altered claim is significantly different from the petitioner's earlier statements in which the petitioner claimed that the beneficiary was only employed abroad from January 1998 to July 2005. Thus, the documentation submitted in response to the AAO's notice is now in conflict with the petitioner's earlier claim. 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). Here, instead of resolving existing deficiencies, the petitioner has created new ones, thereby further undermining the credibility of the original claim.

In light of the additional inconsistencies created by the newly submitted documents, the AAO questions the validity of the employment letters and receipts for wages purportedly paid to the beneficiary within the relevant time period. 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. *Id.* at 591. The AAO further notes that none of the documents submitted by the petitioner can be deemed contemporaneous evidence and appear to have been fabricated for the sole purpose of meeting the regulatory requirements. Moreover, the fact that the employment letters are not contemporaneous evidence affords these documents minimal probative value in determining whether the beneficiary was employed by the foreign entity during the relevant time period.

Accordingly, given the numerous significant deficiencies discussed above, the AAO concludes that the petitioner has failed to establish that the beneficiary was employed abroad for one year by a qualifying entity during the relevant three-year time period.

The AAO will continue the discussion of the petitioner's eligibility by addressing the additional issues that were discussed earlier in the AAO's October 23, 2008 notice.

The first two issues discussed in the AAO's notice question the beneficiary's employment capacity both abroad and with the U.S. entity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. 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)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In support of the Form I-129, the petitioner provided two separate letters discussing the beneficiary's foreign and proposed employment. With regard to the former, the petitioner provided a letter dated

November 10, 2006 on the foreign entity's letterhead, signed by the company's president. The following statements were used to describe the beneficiary's position abroad as manager:

In this capacity, [the beneficiary] oversees the overall operation of the company in the field of catering, [and] domestic service recruitment for providing manpower services to our clients in [the] Middle East and Saudi Arabia, where we have been providing our manpower for [sic] our clients. He hires, trains, supervises, and fires cooks, chefs and domestic servants for work in [the] Middle East. He trains them and oversees the operation of the of [sic] our parent company.

[The beneficiary] has been supervising [sic] catering and food branch of [the] parent entity. His recipes, cooking and catering services have been appreciated by [the foreign entity's] clients.

The petitioner also provided the foreign entity's organizational chart, showing a multi-tiered organization with the board of directors, the company's president, and three directors at the top three levels of the hierarchy, respectively. Each director is shown as having at least one manager as his/her direct subordinate, and two of the four managers are shown as having assistant managers as their subordinates. One of the managers is shown as having no subordinates and the fourth manager, i.e., the account manager, is shown as supervising a bookkeeper. Each of the assistant managers is shown as having subordinate staff members within his/her respective division. The AAO notes, however, that neither of the beneficiary's subordinate employees was identified by name and neither individual's job description was provided.

With regard to the beneficiary's proposed employment with the U.S. entity, the petitioner provided a letter dated December 15, 2006 in which the following job description was provided:

[The beneficiary] will serve as [d]irector [of the petitioning entity] and will hire, train, supervise and fire all of the personnel involved in business [with the petitioner. He] will, in turn, perform managerial functions with respect to lower echelon employees. He will establish and maintain relations and will develop and implement an overall operating structure and marketing plan for [the] food business.

The petitioner also provided an organizational chart illustrating its own proposed hierarchy. The beneficiary's position of vice president is shown as third from the top, subordinate directly to the petitioner's president. The positions subordinate to the beneficiary include seven managers, each of whom is shown as having an assistant subordinate who is then assisted by various staff members who are assigned to perform the operational tasks within his/her given department. It is noted that the only positions that were filled at the time the chart was created were the beneficiary's position and the position of the company president.

On February 7, 2007, the director issued a request for additional evidence (RFE). The director informed the petitioner that the statements addressing the beneficiary's proposed employment were overly general and resembled restated portions of the applicable regulatory definitions. Accordingly, the petitioner was asked to provide a comprehensive description of the beneficiary's proposed job duties, expressly stating which job duties qualify the beneficiary as a managerial or executive

capacity employee. With regard to the beneficiary's employment abroad, the director instructed the petitioner to describe the beneficiary's typical managerial responsibilities, including an explanation of how the beneficiary evaluated his subordinates. The petitioner was also asked to provide documentary evidence of managerial decisions the beneficiary made on behalf of the foreign entity and to describe the job duties of the beneficiary's subordinates.

In response, the petitioner provided an undated letter, which was accompanied by the following statements regarding the beneficiary's proposed and foreign employment, respectively:

**Proposed Duties of [the] Beneficiary as Director [of O]perations and Marketing[:]**

1. To [p]lan, direct, or coordinate the operations of [the petitioner's business] in [the] U[.]S[.]A.
2. To formulate company policies, manage daily operations of its retail and whole sale [sic] operations in [the] U[.]S[.]A[.], and plan the efficient and economic utilization of company resources [sic] materials as well as human resources.
3. To organize the operations of [the] entity in [the] U[.]S[.]A[.], including but not limited to hiring and firing of company employees working in [the] U[.]S[.]A[.], which includes personnel management, purchasing of merchandise, or administrative services.
4. To [d]irect the actual distribution movement of a product or service to the customer.
5. Coordinate sales distribution by establishing sales territories, quotas, and goals and establish training programs for sales representatives.
6. Analyze sales statistics gathered by staff to determine sale [sic].

**Duties performed as Director [of] Catering Services with [the f]oreign parent entity[:]**

To see overall operations of [the f]oreign [e]ntity as [the] director [of] catering services in India. He oversaw the operation of [c]atering and [d]omestic services of [the p]arent [e]ntity in India. He hired, fired and trained the employees and managers including but not limited to hiring and firing of employees working in [the d]epartment[.]

To [d]irect the actual distribution or movement of a product s [sic] or services to the customer; [c]oordinate sales distribution by establishing training programs for [m]anagers; [a]nalyze sales statistics gathered by staff to determine potential and inventory requirements and monitor the preferences of customers[.]

Plan, direct or coordinate operations of our [sic; t]o formulate company policies, manage daily operations in [the] head office[.]

To plan the efficient and economic utilization of company resources [sic] materials as well as human resources.

Although the director did not analyze or make a finding with regard to the above information, the AAO conducted its own independent review on appeal and found that while the petitioner acknowledged the director's notice, the above response lacked the requested comprehensive description of the beneficiary's proposed job duties and instead contained additional statements generally discussing the beneficiary's overall job responsibilities.

The AAO found that the petitioner's descriptions of the beneficiary's foreign and proposed employment were inadequate, lacking any detailed information about the beneficiary's specific day-to-day job duties and generally failing to convey a meaningful understanding of the tasks the beneficiary performed abroad and would perform for the U.S. entity in order to meet his overall job responsibilities. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Accordingly, in its own separate RFE, the AAO notified the petitioner that, in addition to the ground for ineligibility previously identified by the director, the petitioner was also ineligible due to its failure to provide sufficient job descriptions for the beneficiary's foreign and proposed positions and that the petitioner therefore failed to establish that the beneficiary was employed abroad and would be employed in the United States in a qualifying managerial or executive capacity.

In response, the petitioner submits a letter dated November 23, 2008. As the letter is not signed, it is unclear whether the person making statements on behalf of the petitioner is authorized to do so. Regardless, the response merely reaffirms the prior claim that the beneficiary's proposed employment in the United States would be within a managerial capacity and further states that a detailed job description "will develop further as this new line of service establishes [sic]."

In response to the AAO's findings regarding the description of the beneficiary's foreign employment, the letter states that new evidence is being provided with details of the beneficiary's employment to show that the beneficiary was a managerial worker. However, the only additional evidence provided in response to the AAO's RFE were the receipts for alleged payments of the beneficiary's salary and the five employment letters all of which are identical and state that the beneficiary was employed as a "[c]ook/[s]upervisor [who was] in charge of the [p]antry." While this brief description lacks the degree of detail necessary to establish the beneficiary's daily tasks, it is nevertheless indicative of an individual whose time appears to have been primarily devoted to performing operational, rather than managerial, job duties. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

In light of the petitioner's deficient response to the AAO's adverse findings regarding the job descriptions for the beneficiary's foreign and proposed employment, the AAO concludes that the petitioner has failed to establish that the beneficiary's employment abroad (even if established) and his proposed employment in the United States have been and would be within a qualifying managerial or executive capacity.

The remaining issue addressed by the AAO in its RFE notice was that of a qualifying relationship between the U.S. petitioner and the beneficiary's alleged foreign employer.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." Title 8 C.F.R. § 214.2(l)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "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" and "is or will be doing business." "Subsidiary" is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity." 8 C.F.R. § 214.2(l)(1)(ii)(K). "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H).

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; 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.

With regard to the issue of a qualifying relationship, the AAO found that the petitioner's claim is not supported by the evidence of record. Specifically, the AAO pointed out that the L Classification Supplement to Form I-129 identifies the relationship between the foreign entity and the U.S. petitioner as that of parent/subsidiary, the latter being the subsidiary. The AAO further observed that the record contains documents that are inconsistent with one another. Namely, Article 4 of the petitioner's Articles of Incorporation states that the petitioner is authorized to issue a total of 1,000 shares of its stock. However, this document is accompanied by stock certificate No. 1, which issued a total of 10,000 shares of the petitioner's stock to the foreign entity. Thus, the stock certificate indicates that the petitioner issued an excess of 9,000 shares of stock, thereby going beyond the authorized amount specified in its Articles of Incorporation.

Further discrepancies were found when the AAO reviewed the above documents and considered the petitioner's claim in light of the petitioner's Minutes of Organizational Meeting of the Board of Directors, dated September 30, 2005. While this document is consistent with the petitioner's Articles of Incorporation in terms of the number of shares the petitioner was authorized to issue, the document lists [REDACTED] and [REDACTED] as the petitioner's owners. More specifically,

the document indicates that Asad Siddiqui became owner of 900 of the petitioner's authorized shares in exchange for his payment of \$9,000, while ██████████ became owner of the remaining 100 shares in exchange for her payment of \$1,000 with a par value of \$10 per share. It is further noted that ██████ and ██████████ were named as the petitioner's shareholders in a document entitled, "Stock Purchase Agreement of [the Petitioner] a For-Profit Corporation," which was executed on August 20, 2006, four months prior to the date the petition was filed. The AAO has already informed the petitioner that these documents are entirely inconsistent with regard to the petitioner's claimed ownership, a factor that is germane in determining whether the foreign and U.S. entities are commonly owned and controlled. *See id.*; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362; *Matter of Hughes*, 18 I&N Dec. 289.

In response to the above findings, the petitioner's letter merely expresses regret for a typographical error in the submitted documents and reaffirms the claimed parent/subsidiary relationship previously claimed. 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). Moreover, 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 the present matter, the petitioner has submitted a letter alleging that a typographical error in "the numbers [sic] of zero in the amount of shares." It is noted that the letter does not specifically explain which document contains the alleged error, nor is there any corroborating, documentary evidence supporting the claim in the letter, keeping in mind that the petitioner has not identified the author of the letter nor established that whoever wrote the letter had the authority to make statements on behalf of the petitioner. There is also no acknowledgement or documentation resolving the added inconsistency regarding who actually owns the petitioning entity. In light of these considerable deficiencies, the petitioner's failure to provide documentation resolving such inconsistencies and establishing common ownership and control between the U.S. and foreign entities, the AAO concludes that the petitioner has failed to establish that the two entities have a qualifying relationship as claimed.

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). Therefore, based on the additional grounds of ineligibility discussed above by the AAO, this petition cannot be approved.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown 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 at 1043, *aff'd*, 345 F.3d 683.

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.