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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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File: EAC 07 151 54159

Office: VERMONT SERVICE CENTER

Date:

JUL 30 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:



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 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 Pennsylvania corporation established in November 2006, states that it intends to provide electrical engineering and mechanical consulting services to the United States shipyard industry. It claims to be an affiliate of Ship Consult and Trading GmbH, located in Germany. The petitioner seeks to employ the beneficiary in the position of managing director of its new office in the United States for a period of one year.

The director denied the petition, concluding that the petitioner did not establish that the U.S. company 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, counsel for the petitioner asserts that the documentation previously submitted is sufficient to demonstrate the affiliate relationship between the U.S. company and the beneficiary's foreign employer. Counsel also emphasizes that the U.S. Citizenship and Immigration Services (USCIS) has already approved an L-1A classification petition on behalf of an employee of the petitioning organization, thus the requisite qualifying relationship has already been proven. Counsel submits a brief and 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)(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 sole issue addressed by the director is whether the petitioner has established that there is a qualifying relationship between the U.S. company and the beneficiary's 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).

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 (1)(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.

\* \* \*

- (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 1, 2007. On the L Classification Supplement to Form I-129, the petitioner indicated that the U.S. company is an affiliate of the German entity, Ship Consult and Trading GmbH, but the petitioner did not describe the stock ownership and managerial control of each company. The petitioner indicated that the beneficiary's position title with the foreign entity is managing director and "sole partner."

In support of the petition, the petitioner submitted a letter from the foreign entity which referred to the U.S. company as a "branch" and "affiliate." The foreign entity noted that the beneficiary is registered as the "vendor" or "representative" of the German company and that he has been instrumental in establishing the U.S. company.

The foreign company is described as a civil partnership. The petitioner submitted a "Civil Code of Partnership" dated January 14, 2002, with English translation. Section 3 of the document refers to "Share Capital, Contributions" and states the following:

The stated share capital of the company amounts to Euro 25.000 . . .  
Of this amount the shareholder Prescher International Repair Service GmbH assumes a share of the same amount. This share has to be paid in full and in cash immediately.

No other evidence of the ownership of the foreign entity was submitted.

With respect to the ownership and control of the U.S. company, the petitioner submitted the following:

- Articles of Incorporation filed on November 13, 2006, which state that the corporation is authorized to issue 1,000 shares of Common Stock, without par value. The Articles indicate that "All shares of Common Stock issued by the corporation shall be uncertificated shares." The beneficiary and [REDACTED] are identified as the incorporators of the company.
- A Unanimous Written Consent of Directors in Lieu of an Organization Meeting of Directors pursuant to 15 Pa.C.S. § 1727(b), which includes the following resolution: "that the offer of each of [the beneficiary] and [REDACTED] to purchase 50 shares of the Common Stock, no par value per share, of the Corporation for the consideration of \$50.00 is hereby accepted." [REDACTED] as appointed to the office of president and secretary, and the beneficiary was appointed to the office of president and treasurer. The document is undated and unsigned.
- A letter dated March 20, 2007 from [REDACTED] Vice President, Human Resources with Aker Philadelphia Shipyard, Inc., the petitioner's U.S. client, who stated that the petitioner is a subsidiary of Ship Consult & Trading GmbH.

The petitioner also submitted a copy of its by-laws, and evidence that USCIS had recently approved an L-1A petition filed on behalf of another employee of the foreign entity who is intended to be the manager of the petitioner's engineering division in the United States.

The director issued a request for additional evidence (RFE) on May 12, 2007. The director instructed the petitioner to submit copies of all share certificates, stock ledgers or other evidence documenting ownership and control of the foreign and United States companies.

In a response dated May 17, 2007, counsel for the petitioner stated that the foreign entity "is the parent company under which [the petitioner] operates as a subsidiary." Counsel explained that there are no "certificated" shares of stock because the company's articles of incorporation provide that no share certificates will be issued. Counsel noted that the documentation submitted shows that the beneficiary is co-president of the company, one of two officers, and an incorporator of the U.S. company. Counsel further

stated that the organizational charts submitted for the two companies confirmed the beneficiary's job titles and role within the company.

With respect to the foreign entity, counsel stated that the beneficiary is the managing director of the company, and emphasized that the foreign entity's organizational chart confirms this information. The petitioner submitted a letter dated March 15, 2007 in which the beneficiary stated that he is the sole partner and managing director of the foreign entity, and that he incorporated the company in 2001.

The director denied the petition on May 25, 2007, concluding that the petitioner failed to establish that it has a qualifying relationship with the foreign entity. The director acknowledged the petitioner's submission of the "Unanimous Written Consent of Directors in Lieu of an Organization Meeting of Directors," which stated that the beneficiary and [REDACTED] were authorized to purchase equal shares in the company. However, the director noted that the document was unsigned and contained no clear indication that it was duly accepted as binding by the company. The director therefore concluded that the ownership and control of the U.S. entity had not been adequately established through supporting documentary evidence.

The director further found that the sole evidence of ownership and control of the foreign entity was the beneficiary's own letter dated March 15, 2007, in which he stated that he is the sole partner of that company. The director concluded that the beneficiary's unsupported assertions alone are self-serving and insufficient to establish that the beneficiary owns the foreign entity. Therefore, the director concluded that the petitioner had failed to establish the ownership and control of either company.

On appeal, counsel for the petitioner asserts that the beneficiary has been the sole partner and managing director of the foreign entity since the company was incorporated in 2001, and that he is also co-president, secretary and shareholder of the U.S. company. Counsel asserts that the director erred in determining that the documentary evidence submitted did not show "an ownership and control relationship" between the two entities.

Counsel states that all evidence submitted in support of this petition, including corporate documents and supporting letters, were previously submitted in support of another L-1A petition that was approved by USCIS in April 2007. Counsel asserts that approval of that petition "is proof that there is definitely a relationship between the U.S. and foreign entities in regards to ownership and control."

Further, counsel indicates that the petitioner submitted extensive evidence to show that the "German parent" began contacting legal counsel in the United States regarding the creation and incorporation of the U.S. company as early as August 2006, and to demonstrate that other entities, including banks, worked with both entities with respect to the establishment of the U.S. company. Counsel also indicates that the letter from Mr. [REDACTED] of Aker Philadelphia Shipyard, Inc. further confirms that the petitioner is a subsidiary of the foreign entity.

In support of the appeal, the petitioner submits a signed copy of the Unanimous Written Consent of Directors in Lieu of an Organization Meeting dated November 9, 2006, an unsigned copy of which was previously submitted. Counsel states that "it is reasonable to assume that, even unsigned, the legal instrument remains in force and the underlying intent of the officers was to have the document executed." The petitioner also

submits the minutes of a May 5, 2007 shareholders meeting of the petitioning company, which indicates that the beneficiary and [REDACTED] continue to each hold a 50 percent interest in the petitioning company.

Upon review, and for the reasons discussed herein, the petitioner has not established that it has a qualifying relationship with 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 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 or member 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, or equivalent documents, must also be examined to determine the total number of shares or membership units issued, the exact number issued to each shareholder or member, and the subsequent percentage ownership and its effect on control of the company. Additionally, a petitioning company must disclose all agreements relating to 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.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

While the petitioner asserts that the beneficiary has been the sole partner of the foreign entity since it was established, the foreign company's Civil Code Partnership document dated January 2002 identifies Prescher International Repair Service GmbH as its only shareholder and does not name the beneficiary. No explanation has been provided for this important discrepancy. In fact, the petitioner does not acknowledge that the foreign entity's partnership document contradicts its claim that the beneficiary owns the foreign entity, much less attempt to explain the inconsistency. 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).

The beneficiary's alleged ownership of the foreign entity is based solely on his own and counsel's unsupported claims that he is the "sole partner" of the company. However, 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). If the beneficiary

does in fact own the foreign entity as its sole partner, it is reasonable to expect the petitioner to supply some documentary evidence of this ownership other than the beneficiary's unsupported assertions.

Since the petitioner has not provided any persuasive documentary evidence to the contrary, it appears from the evidence in the record that the foreign entity is owned by Prescher International Repair Service GmbH, not by the beneficiary.

With respect to the U.S. entity, the petitioner indicates that the beneficiary and another individual each own a 50 percent interest in the company. The AAO concurs with the director that the evidence of the ownership of the U.S. company, which consisted of an unsigned and undated document, was lacking in probative value. The fact that the petitioner does not issue stock certificates does not relieve the petitioner from its burden to submit persuasive documentary evidence of its ownership and control. Regardless, since the record does not demonstrate that the beneficiary owns any interest in the foreign entity, no affiliate relationship can be established, even if the petitioner demonstrates that the beneficiary owns 50 percent of the U.S. entity.

The petitioner also seems to rely on the unsupported statement of its client's vice president as evidence of its ownership and control. As noted above, [REDACTED] of Aker Philadelphia Shipyard stated that the petitioner is a subsidiary of the foreign entity, but did not indicate where he derived this information regarding the petitioner's corporate structure. In fact, [REDACTED]'s statement that the petitioner is a subsidiary of the foreign company contradicts counsel's claim that the beneficiary and [REDACTED] are the owners of the U.S. company. [REDACTED]'s unsupported assertions are therefore unpersuasive.

Finally, it is noted counsel and the petitioner alternatively refer to the U.S. company as a subsidiary and as an affiliate of the foreign entity, using the terms interchangeably. This fundamental inconsistency, combined with the overall lack of documentary evidence in the record, raises questions regarding the validity of the petitioner's claims. Nevertheless, the petitioner has not submitted documentary evidence to support a finding of an affiliate relationship or a parent-subsidiary relationship, and therefore the appeal will be dismissed.

The AAO acknowledges that USCIS previously approved one or more L-1 nonimmigrant petitions by the petitioning company. It must be emphasized that that each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *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). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

If other nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. 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. 593, 597 (Comm. 1988). 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 (6th 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 by the petitioner for similar positions, 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).

Beyond the decision of the director, the petitioner has not established that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity within one year of approval of the instant petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). While the petitioner submitted a letter in support of the instant petition, the letter refers to the sponsored employee as [REDACTED] and describes her proposed duties in the United States as president and treasurer. The record contains no description of the beneficiary's proposed duties. 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. While the AAO recognizes that the beneficiary would be "co-president" of the U.S. entity, the petitioner is still obligated to provide a detailed description of the specific duties he will perform in the United States. The fact that the beneficiary will have an executive title is insufficient to establish his eligibility for this classification. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* Absent a description of the beneficiary's duties, the AAO cannot conclude that the beneficiary would be employed in a primarily managerial or executive capacity. Accordingly, the petition cannot be approved.

Furthermore, the petitioner has not submitted documentary evidence demonstrating that it has secured physical premises sufficient to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A). In the supporting letter submitted by the foreign entity, it was stated that the U.S. company "is utilizing space within the APSI offices and is presently operating out of these premises at [REDACTED]". The petitioner provided a telephone number of an APSI employee who could be contacted to confirm this information. This evidence is insufficient. The petitioner has not provided any documentary evidence to demonstrate that it has sufficient physical premises to house the new office, such as a lease agreement or a letter from the alleged lessor setting forth the terms of use of the claimed physical premises. The petitioner cannot meet its evidentiary burden with unsupported assertions. 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).

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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if 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 at 1043.

Further, based on the lack of evidence of a qualifying relationship between the petitioner and the foreign entity in the current record, the AAO instructs the director to review prior L-1 classification petitions filed by this petitioner for possible grounds for revocation.

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.