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U.S. Citizenship and Immigration Services

[redacted]

File: EAC 00 272 55659 Office: VERMONT SERVICE CENTER Date: JUL 28 2004

IN RE: Petitioner:
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)

IN 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, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a corporation organized in the State of Virginia in July 1999. It is a new U.S. office that claims it will generate revenue "from the import and sales of wood products and natural vegetables from China to the US and purchase of local products and equipment from the US and export to China." It seeks to temporarily employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as a 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 claims that it is the subsidiary of Chao Er Forest Industry Co., Ltd., located in Ya Ke Shi City, China.

The director denied the petition concluding that the petitioner had not established that the U.S. entity, within one year of approval of the petition, would support the beneficiary in a primarily managerial or executive capacity. The director observed specifically that: (1) the petitioner's initial business plan did not explain how the petitioner planned to reach its projected sales targets; (2) although requested, the petitioner had not provided a business plan and comprehensive position descriptions for its proposed staff members; (3) the petitioner had not responded to the director's request to provide documentary evidence of the transfer of funds used in the incorporating process and lease acquisition and the record did not contain independent documentary evidence of the relationship between the two organizations; and, (4) the petitioner had not provided evidence that it had sufficient funds to commence doing business as alluded to in the petition.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, 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."

Counsel for the petitioner attached a letter to the Form I-290B Notice of Appeal that was filed on May 7, 2001. Counsel also requested 120 days to submit a brief "since the petitioner's principals are in China." The AAO observes that the petitioner did not submit sufficient information to establish good cause to extend the requirement of a brief within 30 days of the Form I-290B submission; however, even if good cause had been established, careful review of the record reveals no subsequent submission; all documentation, other than the letter accompanying the Form I-290B, in the record predates the issuance of the notice of decision.

In the May 5, 2001 letter, counsel takes issue with the director's observation that the petitioner had failed to provide a business plan and comprehensive descriptions for all the petitioner's proposed staff members. Counsel correctly notes that the record contains both a business plan and a job description for the beneficiary's position. However, both the business plan and job descriptions were submitted with the petition. On October 10, 2000, the director requested a complete position description for all of the petitioner's proposed employees and a business plan giving specific timetables as well as a detailed description of the petitioner's prospective customers, the services to be rendered by the organization, and the products and/or commodities to be sold. The petitioner failed to provide a business plan containing the information the director requested. The petitioner also failed to provide a comprehensive description of the beneficiary's proposed duties or any job descriptions for the petitioner's proposed staff of a vice-president, marketing manager, administrative manager, and "as needed support staff." 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). Moreover, the non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Counsel also complains that the record does not mention the "sale of . . . vegetables" and asserts that this statement comes from some unknown source. The AAO observes that the petitioner's superficial business plan states:

> The Gross Revenue to be generated during the first year of the US operation is estimated at $3 millions. Its revenue will be generated from the import and sales of wood products and *natural vegetables* from China to the US and purchase of local products and equipment from the US and export to China. *[Emphasis added.]*

Counsel also asserts that the record contains ample evidence of the financial strength of the petitioning company and that the petitioner's "proposed business plan requires substantial investment in the United States, which the parent company is capable of providing." However, the 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). Moreover, the director requested documentary evidence showing that the foreign entity had made an investment in the United States entity and evidence that the foreign entity had the ability to continue to invest in the United States entity. Counsel for the petitioner responded by stating that the petition did not mention that the Chinese company had made an investment in the United States entity[1] and that the Chinese parent company would transfer funds as soon as the beneficiary is able to come to the United States. The AAO observes that currently the record contains no documentary evidence of the financial strength of the petitioning company.

Further, in response to the director's request for documentary evidence showing the foreign entity's financial ability, counsel for the petitioner stated that the foreign entity's bank statement showed that the available balance in the foreign entity's exchange account is $1,250,000. Counsel attached a single page document that included a seal but no signature and that had no discernable letterhead. This document indicated $1,250,000 was in the claimed parent company's account in November 2000. The director properly attached little probative value to an unsworn document containing little verifiable information as to its source. The record contains no probative evidence of the foreign entity's financial ability.

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[1] The petitioner provided a copy of a stock certificate that allegedly issued 1,000 shares to the claimed foreign entity. The stock certificate bears the notation "5,000 shares common stock, par value $1.00." If the claimed foreign company had actually purchased the 1,000 shares, the petitioner should have received $1,000 for their value. Thus, the stock certificate is an indication that the claimed foreign entity invested at least $1,000 in order to receive the 1,000 shares. However, according to counsel the petitioner has not received any funds for the stock issued. 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).

Finally, counsel claims that the record contains ample evidence of the relationship between the petitioner and the Chinese organization. Counsel's claim is undermined by the implicit admission that the foreign entity has not actually purchased the petitioner's stock. As ownership is a critical element of this visa classification, stock certificates alone are not sufficient evidence to conclude that a stockholder maintains ownership and control of a corporate entity.

Counsel's letter on appeal does not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal. Asserting that the record contains ample documentary evidence to support the petition does not sufficiently describe any errors of law or fact made by the director. The regulations mandate the summary dismissal of the appeal.

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 summarily dismissed.