U.S. Department of Homeland Security
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Washington, DC 20529

D-7

U.S. Citizenship and Immigration Services

[redacted]

File: SRC 02 167 53344 Office: TEXAS SERVICE CENTER Date: JUN 30 2004

IN RE: Petitioner: [redacted]
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)

IN 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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The nonimmigrant petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner seeks classification of the beneficiary as a nonimmigrant manager or executive pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay. The director determined that the petitioner had failed to demonstrate that the beneficiary will be employed in the United States in a primarily managerial or executive capacity, as required under 8 C.F.R.§ 214.2(l)(3)(v)(C)(*2*). The director also found that the petitioner had failed to show that the U.S. entity will be able to support a managerial or executive position within one year of the approval of the petition, as compelled by the regulation at 8 C.F.R. § 214.2(l)(3)(ii).

On appeal, the petitioner filed a two-page statement prepared by its president, which states:

> The visa extension of the beneficiary is need [sic] since the planned contracts for 2003 and the pre-negotiations for contracts are made personally by the beneficiary (please see attachment). The signing of such contracts require the beneficiary. European contracts, negotiations and financial transactions are made by me while I'm there. Since I have duties here in the U.S. and in Europe as well, while I'm in Europe the Vice-President is supervising the company. For the beneficiary, to be able to continue her work here in the U.S., to continue personally the negotiations for the contracts, to supervise the employees of the company, to make financial decisions, to conduct business conferences, her L-1visa extension is needed. Furthermore, the company fears that the personally signed long term contracts by the beneficiary will be impaired.
>
> I would hereby like to ask you to please take the above mentioned into consideration and make a favorable decision in the case based on the above mentioned and the already submitted evidence.

With this statement, the petitioner provided a copy of a licensing agreement signed by the beneficiary on October 24, 2002.

As stated in 8 C.F.R. § 103.3(a)(l)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. In this case, the petitioner fails to address the basis for the director's denial, and does not allege that there was an erroneous conclusion of law or statement of fact. Instead, the petitioner merely makes a plea to the office to reconsider its findings based on its claim that the beneficiary's services are indispensable.

The petitioner here has not addressed the reasons stated for the denial and has not provided any additional evidence that is relevant to the issue upon which the director based her decision. The appeal must therefore be summarily dismissed.

In addition to the director's decision, the AAO notes a number of additional issues that were not previously addressed prior to adjudication of the petition. First, the evidence in the record is insufficient to establish that the U.S. and foreign entities have a qualifying relationship contrary to the requirements of 8 C.F.R. § 214.2(l)(14)(ii)(A). The petitioner claims that the U.S. entity is a wholly-owned subsidiary of 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 this case, the petitioner has not demonstrated either ownership or control and therefore cannot be found to have a qualifying relationship with the foreign entity.

The only evidence contained in the record to substantiate the petitioner's claim is in the form of two stock certificates, each for 100 shares, which were issued to the foreign entity on October 23, 2000. The petitioner provides no additional evidence, such as the corporate stock certificate ledger or corporate bylaws to confirm the actual number of shares outstanding and the exact number issued to each shareholder. Without additional evidence to confirm the actual number of shares issued by the U.S. entity, the AAO cannot conclude that the foreign entity is the sole owner of the U.S. petitioner. For this additional reason, the petition will be denied.

Second, it does not appear that the U.S. entity has been doing business for the previous year as required by the regulations. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of the new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year. The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii). There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

In this case, the petitioner claims to be in the import and export business, and specifically states that its primary function is to negotiate agreements for the acquisition of American-made used cars and car parts in order to export these items to Hungary. The record, however, is devoid of any evidence that supports this contention. The only evidence submitted by the petitioner is documentation showings its acquisition of TBS Continental, Ltd., through which the petitioner intends to distribute motion picture films, and evidence of a short-term property investment located in Hungary. This evidence does not support the petitioner's claim that it has been doing business for the previous year. Although the petitioner asserts that it "solicited and received offers for products to be purchased for import and export," the record contains no evidence of these offers. Therefore, it appears that the U.S. entity has not been doing business through the regular, systematic, and continuous provision of goods through importation and exportation. For this additional reason, the petition will be denied.

ORDER: The appeal is summarily dismissed.