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

PUBLIC COPY

File: SRC 04 019 52507 Office: TEXAS SERVICE CENTER Date:

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)

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

DISCUSSION: The Director, Texas 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 is a corporation organized in the State of Florida that is engaged in import and export of bearings for cars and trucks. The petitioner claims that it is the affiliate[1] of Rolineras Tecnicas (Rolitec), C.A. located in Valencia, Venezuela. The petitioner seeks to employ the beneficiary as the president of its new office in the United States for a three-year period.

The director denied the petition concluding that the petitioner had not established that the U.S. company and the foreign entity have a qualifying relationship as required by 8 C.F.R. § 214.2(l)(1)(ii)(G). Specifically, the director noted that the percentage of common ownership between the two companies appears to be only 20 percent.

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 asserts that it inadvertently failed to provide copies of all of its stock certificates. Specifically, the petitioner claims that it submitted only its initial stock certificate showing issuance of all shares to the beneficiary on July 27, 2003. The petitioner contends that the shares were re-distributed following a meeting of the Board of Directors on August 15, 2003. The petitioner claims, as a result of the alleged stock transfer, the U.S. company was a qualifying organization at the time the petition was filed. In support of this assertion, the petitioner submits additional evidence.

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.

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[1] The AAO notes that the petitioner indicated that the U.S. company is the parent of the foreign company on the Form I-129 Petition. In the letter that accompanied the initial petition, the petitioner indicated the foreign company is the parent company of the U.S. company. On appeal, the petitioner states that the companies are "affiliated" and seeks to establish an affiliate relationship with documentary evidence.

(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) further provides 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 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 involved executive of 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 he United States; and

(3) The organizational structure of the foreign entity.

The issue in the present matter is whether the petitioner has established a qualifying relationship with the beneficiary's foreign employer.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in relevant part:

(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, subsidiary or affiliate specified in paragraphs (l)(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; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

* * *

(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 entirely owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity[.]

On the L Classification Supplement to Form I-129, the petitioner indicated that it is the parent company of the foreign entity and stated the following: "Stock ownership of foreign company: 20%; U.S. Company: 100%." In the October 22, 2003 letter which accompanied the petition, the petitioner referred to the foreign entity as its parent company. The petitioner submitted no evidence of the U.S. company's ownership with the initial petition. As evidence of the foreign company's ownership, the petitioner submitted its articles of incorporation showing the original issuance of 2,000 shares of stock in the following proportions: [redacted] 1,100 shares or 55 percent; [redacted]r – 300 shares or 15 percent; [redacted] the beneficiary) – 300 shares or 15 percent; and [redacted] – 300 shares or 15 percent.

On December 18, 2003, the director requested additional evidence to establish a qualifying relationship between the two companies. Specifically, the director requested documented proof, such as stock certificates, establishing the ownership of the petitioning organization and the foreign entity, Rolitec C.A.

In response to the director's request, the petitioner submitted one stock certificate, which indicates that 100 shares of the petitioner's stock were issued to [redacted] on July 27, 2003. The stock certificate does not indicate how many shares the company is authorized to issue. No other documentation of the U.S. company's ownership was submitted. With respect to the foreign company, the petitioner submitted a copy of

the minutes of a shareholder's assembly meeting held on September 27, 2002, which states that the foreign company's ownership is as follows: [redacted] 6,600 shares (55%); [redacted] 1,800 shares (15%); [redacted] 1,800 shares (15%); and [redacted] 1,800 shares (15%). The petitioner stated in its December 31, 2003 cover letter that stock certificates are not used in Venezuela, but that the document provided is "recorded with the mercantile registry."

On January 20, 2004, the director denied the petition, concluding that the petitioner had not established a qualifying relationship between the two companies. Specifically, the director noted that, based on the evidence provided, it appears that the beneficiary owns 100% of the U.S. entity and only 15% of the foreign entity, while another individual, [redacted] owns a majority (55%) of the foreign entity. The director further noted that similar information was shown on the Form I-129, which appeared to indicate 20% common ownership between the two companies.

On appeal, the petitioner asserts that it mistakenly omitted several of its stock certificates when responding to the director's request for evidence. Specifically, the petitioner states that the company's 100 shares were initially issued to the beneficiary on July 27, 2003, as the other two shareholders and members of the board of directors, [redacted] were not physically present in the United States at the time of issuance. The petitioner states that a meeting of shareholders and directors was held on August 15, 2003, and that, at this meeting, it was resolved that the beneficiary would distribute the shares as follows:

[redacted]. 56 Shares
22 Shares
22 Shares

In view of the above, the petitioner asserts that it has a qualifying affiliate relationship with the foreign entity based on "common directors, common shareholders and use of the same commercial name."

Upon reviewing the petition and the evidence, the petitioner has not established that it has a qualifying relationship with the foreign entity as required by 8 C.F.R. § 214.2(l)(1)(ii)(G). The AAO reaches this conclusion by noting a number of inconsistencies in the record, and the apparent alteration of a key document by the petitioner subsequent to submission of its response to the request for evidence.

The petitioner states on appeal that it mistakenly failed to include all four of its stock certificates even though the director specifically requested documentary evidence of the company's ownership. However, the petitioner also seemed to indicate on the Form I-129 that the beneficiary owned 100% of the U.S. petitioner and 20% of the foreign entity, and the evidence submitted in response to the request for evidence confirmed his ownership of 100% of the U.S. company and 15% of the foreign company. Therefore, the petitioner must also be representing that it was not aware of the details of its own ownership when it completed the Form I-129 in October 2003. The petitioner has not claimed on appeal that it erred in completing this document, although the director specifically referred to it in her decision.

With the initial petition, the petitioner submitted its stock certificate "Number One" dated July 27, 2003, which showed that 100 shares of the company's stock were issued to "[redacted]" On appeal, the petitioner states that the 100 shares were initially issued to [redacted], the beneficiary, on July 27, 2003. However, the petitioner also submits a new copy of its stock certificate "Number One," which has been altered and indicates that the stocks were issued to "[redacted] Sr.," the beneficiary's father, on the same date. A copy of the back of the certificate indicates that [redacted] Sr. transferred 56 shares of stock to himself, 22 shares to the beneficiary, and 22 shares to [redacted], on August 15, 2003. Copies of stock certificates numbered two through four are submitted on appeal, showing issuance of stock in the proportions indicated on the back of the first stock certificate.

The petitioner also states that the shares were initially issued to the beneficiary because the other two shareholders, [redacted] Sr., were not physically present in the United States when the initial issuance occurred on July 27, 2003. However, [redacted] signature appears on the stock certificate issued on July 27, 2003. In addition, the altered stock certificate submitted on appeal shows that the 100 shares were issued to [redacted] on July 27, 2003, notwithstanding the petitioner's claim that he was absent from the United States on that date.

In view of the above inconsistencies and the petitioner's alteration of the stock certificate, the AAO will not give evidentiary weight to the documents submitted on appeal. 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). 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 petitioner. *Id.* at 591. Further, if CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. *See, e.g. Anetkhai v. I.N.S.,* 876 F. 2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to response to that deficiency, the AAO need not consider the sufficiency of evidence submitted for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Rather than dismiss the appeal on these grounds alone, the AAO has considered whether the failure to provide a complete response to the director's request was an honest mistake, as claimed by the petitioner, and has also considered the evidence presented. However, as discussed above, the evidence does not establish the requisite qualifying relationship between the U.S. and foreign entities. Moreover, the evidence suggests that the petitioner has altered its records in an attempt to conform to the requirements set forth in the regulations. A petitioner may not make material changes to a petition in an effort to make a deficient petition confirm to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Consequently, the petition must be denied.

Beyond the decision of the director, the record reflects that the U.S. entity did not secure a commercial lease until December 2, 2003, more than one month after it filed its new office petition. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(A) requires a petitioner that seeks to open a new office to submit evidence that it has acquired

sufficient physical premises to commence doing business. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.,* 17 I&N Dec. 248 (Reg. Comm. 1978). Furthermore, the lease agreement, signed on December 2, 2003, indicates that it would commence on January 1, 2003 and end on December 31, 2003, which raises questions regarding its validity. For this additional reason, the petition may not be approved.

Also not addressed by the director in her decision, the record contains no documentation to persuade the AAO that the beneficiary would be employed in a managerial or executive capacity in the United States as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), or that the petitioner would support such a position within one year of approval of the petition. The job description provided for the beneficiary's proposed position indicates that he will primarily perform marketing duties, specifically, that he will "act as liaison and representative for petitioner's foreign parent in the U.S. marketing the services of the parent company, engaging in long-range planning and identifying business opportunities in the U.S. and international market." This job description also raises questions as to whether the U.S. entity intends to do business in the U.S. or whether it will involve the mere presence of an agent or office of the foreign company in the United States. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H). In addition, the petitioner has failed to submit evidence to establish the proposed nature of the new office, the scope of the entity, its organizational structure, the size of the United States investment, or the financial ability to commence doing business in the United States. *See* 8 C.F.R. § 214.2(l)(3)(v). As the appeal will be dismissed, these issues need not be examined further.

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).

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.