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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: SRC 01 077 55303 Office: TEXAS SERVICE CENTER Date: AUG 01 2005

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)

ON 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, Texas Service Center, revoked the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

According to the evidence contained in the record, the petitioner claims to have been established in 1999 as a sole proprietorship. The petitioner claims that it is engaged in retail sales and operates a gas station business. In 1999 the petitioner sought to employ the beneficiary temporarily in the United States as an executive director of the entity. The intracompany transferee L-1A visa was initially granted from January 13, 2000 to January 13, 2001. An extension of the beneficiary's L-1A visa status was granted from January 14, 2001 to January 13, 2003. The director issued a Notice of Intent to Revoke on September 10, 2003, based upon a memorandum received from the American Consulate General in Mumbai where it was determined, subsequent to interviewing the beneficiary in person, that the beneficiary did not have experience or education sufficient to perform the duties of the position being offered by the petitioner in the United States.

In the memorandum, dated August 1, 2001, the American Consulate General stated in part:

> The [beneficiary] is to be employed as an Executive Director at the convenience store with an annual salary of $25,000.00
>
> [The beneficiary's] I-129 states that his job responsibilities would be to "direct, manage and oversee the day to day activities of the company."
>
> However, interviews with Consular Officers indicated that [the beneficiary] is sadly under qualified to fulfill these responsibilities. The following is an exact transcript of the first two questions of the interview:
>
> Officer: What do you do at your current job?
> [Beneficiary]: I do whatever my daddy tells me.
> Officer: What are your responsibilities?
> [Beneficiary]: Basically my dad handles the business.
>
> Interviews with [the beneficiary] revealed the following information:
> - [The beneficiary] does not have a college degree and has completed no academic coursework in business administration.
> - [The beneficiary] has no work experience.
> - [The beneficiary] has no international business experience. He has no knowledge of the US market or the retail industry in the United States.

In response to the director's notice of intent to revoke, the petitioner submitted copies of the beneficiary's resume, secondary school education certificate received from the Maharashtra State Board of Secondary and Higher Secondary Education in March of 1994, transcript containing seven courses taken from the Mithibai College of Arts in March of 1997, and an organizational chart depicting the foreign entity's organizational structure. The petitioner also submitted affidavits of employment from employees of the foreign entity.

The director subsequently issued her decision to revoke the petition on October 27, 2003. The director stated that she revoked the petition based upon the information received from the consulate in Mumbai. The director noted that as a result of the beneficiary's interview with the consulate in Mumbai, where his

statements were taken under oath, the interviewer determined that the beneficiary had no experience or education sufficient to perform the duties of the position being offered by the petitioner in the United States.

On appeal, counsel disagrees with the director's decision and asserts that the evidence submitted by the petitioner is sufficient to establish that the beneficiary has been and will be employed by the U.S. entity in a managerial or executive capacity. Counsel asserts that the consulate's decision was vague, and that the director wrongfully relied upon his/her decision in revoking the petition in the instant matter.

Counsel's assertions are not persuasive. Under CIS regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B). The director noted that based upon a review of the memorandum received from the American Consulate General in Mumbai, the beneficiary made statements under oath that contradicted statements and documentation contained in the petition, which brought into question the legitimacy of the beneficiary's status. The director questioned whether the beneficiary possessed experience and education sufficient to perform the job duties of the position being offered by the U.S. entity. Counsel contends the consular officer failed to provide details as to how he/she arrived at the conclusion that the beneficiary lacked the experience and education sufficient to fill the position in the United States. Counsel also contends that the director wrongfully relied upon the consulate's decision in revoking the petition in violation of the regulation. Contrary to counsel's contentions, the consulate's reasons for initiating the memorandum were sound, and the director's grounds for initiating the Notice of Intent to Revoke were clearly described and rightfully invoked. Upon review, the present petition was properly revoked as the statements of fact contained in the prior petition directly contradicted subsequent statements made by the beneficiary to the American Consulate in Mumbai, contrary to the eligibility requirements provided in the regulations. Accordingly, the appeal will be dismissed and the director's decision to revoke the petition will be sustained.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization, and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge.

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

> *Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

Counsel contends the beneficiary possesses the required education and experience necessary to fill a managerial or executive position in the United States. The petitioner submitted copies of the beneficiary's resume, secondary school education certificate, transcripts from the Mithibai College of Arts, the foreign

entity's organizational chart, and letters of employment from employees abroad as evidence of his education and experience. The evidence demonstrates that the beneficiary was born in 1978, received a secondary school certificate in 1994, and received a certificate from Mithibai College of Arts showing that the beneficiary took seven courses in March of 1997. The evidence also shows that beginning in 1997, the beneficiary was employed by the foreign entity. Counsel and the petitioner assert that the beneficiary was employed in a managerial or executive capacity abroad, and would be responsible for directing, managing, and overseeing the day-to-day operations of the U.S. entity. Contrary to their contentions, the record demonstrates that when the beneficiary was asked by the American Consulate's Office what his job responsibilities were, he responded by stating: "Basically my dad handles the business." 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). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai 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).

The petitioner submitted a copy of the foreign entity's organizational chart that read:

[redacted] Sole Proprietor
[redacted] Manager
[redacted] Accountant (CPA)
[redacted] Operator
[redacted] Clerk
[redacted] Clerk

The petitioner also submitted affidavits of employment sworn to by the foreign company employees, in which it is stated in part:

> I, Mr. [redacted] .hereby declare...that I have been appointed as a Manager in the firm known as 'Meher Enterprises'....
>
> I, the undersigned Mr. [redacted] declare...that I am associated with a company known as Meher Enterprises.... as a Site Manager....
>
> I, the undersigned Mr. [redacted] ... declare...that I have been working as 'Accountant' in... Meher Enterprises....
>
> I, Mr [redacted] .hereby declare on oath...that I am working as a Site-Supervisor in a company known as 'Meher Enterprises'....
>
> I, Mr. [redacted] ..do hereby declare on oath...that I have been appointed as a Clerk in the company known as 'Meher Enterprises'....

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, supra.* Clearly, the

record demonstrates that a contradiction exists between the statement of facts contained in the petition and the statements made by the beneficiary at the American Consulate's Office in Mumbai sufficient to revoke the petition. Accordingly, the appeal will be dismissed and the director's decision to revoke the petition will be affirmed.

Although not directly addressed by the director, another issue in this proceeding is whether a qualifying relationship exists between the U.S. and foreign entities.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

> *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 (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.

The regulations at 8 C.F.R. §§ 214.2(l)(1)(ii) define, in pertinent part, "parent," "branch," "subsidiary," and "affiliate" as:

> (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
>
> (J) *Branch* means an operation division or office of the same organization housed in a different location.
>
> (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.

There is insufficient evidence to demonstrate the existence of a qualifying relationship between the U.S. entity and the beneficiary's foreign employer. The U.S. entity is known as "Merito International, Inc.," and the foreign entity that employed the beneficiary is known as "Meher Earthmovers." The petitioner claims to be a branch office of Meher Earthmovers. In describing the business relationship, the petitioner stated in the petition, "100% of U.S. company and 60% of Indian company owned by beneficiary." The petitioner, therefore, concludes that a qualifying relationship exists between the U.S. entity and the beneficiary's foreign employer. However, there is insufficient detail contained in the record to demonstrate the relationship between the U.S. and foreign entities. In a letter dated January 10, 2001, the beneficiary stated:

> The company abroad is a sole proprietorship operating under the name of Meher Earthmovers. The company was established in 1997 by [the beneficiary] and is currently operated by [redacted] [the beneficiary's] father and business partner.... Since its inception, [the beneficiary] has acted as sole proprietor of Meher Earthmovers, exercising complete control and discretion.

The beneficiary further stated in the letter that the foreign entity is an excavation and construction company. The beneficiary also stated, "It is large [sic] part because of [the beneficiary's] shrewd investment activities that the foreign entity is now in a position to establish a branch office in the United States." Evidence contained in the record, such as the U.S. entity's IRS Form SS-4, Application for Employer Identification Number, demonstrates that the U.S. entity was established as a corporation, not as a branch office of the foreign entity. Furthermore, information contained in Form SS-4 indicates that the beneficiary purchased a "going business," that is described as a convenience store and gas station operating under the name of "Southforks Amoco." Although the petitioner contends the beneficiary purchased all 500 shares of stock in the U.S. entity, there is nothing in the record to substantiate this claim. If it were established that the beneficiary owned and controlled a majority interest in both companies as claimed, then the companies would be affiliates. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Although not addressed by the director, a remaining issue to be examined is whether the petitioner has established that the beneficiary's services are for a temporary period. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. On the petition the petitioner stated "100% of U.S. company and 60% of Indian company owned by beneficiary." In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that he will be transferred to an assignment abroad upon completion of the position in the United States. For this additional reason, the petition may not be approved.

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.