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

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 136 50128 Office: CALIFORNIA SERVICE CENTER Date: JUN 09 2005

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)

ON 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 nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

According to the documentary evidence contained in the record, the petitioner was incorporated in 2000 and claims to be an international legal and tax consultancy business. The petitioner claims that it maintains a qualifying relationship with [redacted] located in Mumbai, India, as a branch office. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as international lawyer and sole proprietor for a period of two years.

The director determined that the petitioner had failed to submit sufficient evidence to establish that: (1) there was a qualifying relationship between the U.S. and foreign entities; (2) the petitioner had been doing business for the year prior to the filing of the petition; and (3) the beneficiary is employed primarily in a managerial or executive capacity.

On appeal, the petitioner disagrees with the director's decision and asserts that the evidence submitted was sufficient to establish a qualifying relationship between the U.S. and foreign entities; that the U.S. entity has been doing business; and that the beneficiary is employed in a managerial or executive capacity.

The petitioner requests that the Citizenship and Immigration Services (CIS) allow for oral argument on appeal. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, CIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identified no unique factors or issues of law to be resolved. In fact, the petitioner set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

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.

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.

* * *

The first issue to be addressed in this proceeding is whether the petitioner has established that a qualifying relationship exists between the U.S. and foreign entities.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define a "qualifying organization" and related terms as:

(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 (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.

* * *

(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.

In support of the petition, the petitioner stated that the U.S. entity was a branch office of the foreign entity, and that the beneficiary was the sole proprietor of both companies.

In response to the director's request for evidence, dated June 7, 2002, the petitioner stated that the U.S. entity was a branch office of the foreign entity and that it focused on the marketing and relationship development and outsourcing work to the foreign entity. The petitioner further stated that the client's work is outsourced to the foreign office and in turn the foreign office manages and delivers the work to the clients. The petitioner also stated that the U.S. entity works with U.S. based clients who are interested in business activities in India, and Indian based companies who are interested in doing business in the United States.

The director determined that there was insufficient evidence to establish that a qualifying relationship exists between the U.S. and foreign entity. The director stated that based upon the evidence of record, the petitioner was merely maintaining the presence of an office or was acting as an agent of the foreign entity. The director noted that the beneficiary was the sole proprietor of both the U.S. and foreign entities. The director also noted that the petitioner/beneficiary stated that he owned and operated both companies, being the sole proprietor of each. The director further noted that the beneficiary left the United States prior to the filing of the instant petition, dated March 15, 2002, and that he was therefore, not present in the United States to operate the business. The director concluded that it was readily apparent that both entities could not be operated simultaneously, and therefore, the petitioner was not conducting business in the United States or in India; thus indicating that there is no qualifying relationship between the U.S. and foreign entities.

On appeal, the petitioner argues that the director's position is erroneous in that the beneficiary was not merely maintaining the presence of an office or merely acting as an agent of the foreign entity. The petitioner further argues that both the U.S. and foreign entities provide professional legal services to their clients. The petitioner also argues that the beneficiary has carried out the legal services work for the company based in the United States and elsewhere.

As a matter of law, the beneficiary is ineligible for the classification sought. It is fundamental to this nonimmigrant classification that there be a United States entity to employ the beneficiary. In order to meet the definition of "qualifying organization," there must be a United States employer. *See* 8 C.F.R. 214.2(l)(1)(ii)(G)(2). The petition includes evidence, including IRS tax records, payroll records, and other business documents that demonstrate that the beneficiary is doing business as a sole proprietorship. Further, the petitioner/beneficiary has indicated in his correspondence his status as a sole proprietor. A sole proprietorship is a business in which one person operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual proprietor. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). As in the present matter, if the petitioner is actually the individual beneficiary doing business as a sole proprietorship, with no authorized branch office of the foreign employer or separate legal entity in the United States, there is no U.S. entity to employ the beneficiary and therefore no qualifying organization. For this reason, the petition may not be approved.

The second issue in this proceeding is whether the petitioner had been doing business as defined in the regulations.

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

> *Doing business* means 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.

In response to the director's request for additional evidence on the subject, the petitioner stated:

> The Palo Alto Office is involved in the areas of international taxation, e-commerce, technology law, media law, IPOs, M&A venture capital funds & financing, patents & other IPRs and corporate governance.

As evidence, the petitioner submitted copies of business invoices made out to the U.S. entity. The petitioner also submitted copies of its bank statements and a list of clients attended by the beneficiary. The petitioner submitted copies of articles, publications, and newspaper reports published by the U.S. entity.

The director noted that the evidence demonstrated that the petitioner was not conducting business in either the United States or in India. The director stated that the evidence showed that the beneficiary left the United States prior to filing the instant petition for extension of stay, and therefore is not present to operate the U.S. entity. The director also found that the petitioner had not shown that the U.S. and foreign entities could be operated simultaneously.

On appeal, the petitioner disagrees with the director's decision and files a brief and evidence to support its contentions. The petitioner contends that as a sole proprietor, the beneficiary owns both the U.S. and Indian offices, and that different employees manage the separate entities. The petitioner asserts that the foreign entity has 41 employees who are responsible for operating the business. The petitioner also asserts that the U.S. entity employs three persons, including the beneficiary, who are responsible for the operation of the business. The petitioner submits copies of confirmation letters written to [redacted] from various California based business entities, a travel itinerary for the beneficiary, an international conference schedule of workshops attended by the beneficiary, and a list of research papers and publications produced by [redacted] The petitioner resubmits tax forms prepared for the U.S. and foreign entities.

There is insufficient evidence contained in the record to demonstrate that the U.S. and foreign entity are and will continue doing business. There has been no evidence submitted to show that anyone has been designated to substitute for the beneficiary in his absence from the foreign entity. The record does not demonstrate that the other employees abroad are maintaining a developing enterprise. There has been no documentary evidence submitted to substantiate the petitioner's claim that the foreign entity will remain viable as a sole proprietorship in the absence of the beneficiary. Simply 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).

The petitioner submitted an untranslated copy of the foreign entity's tax records in support of its contention. However, the untranslated document submitted is insufficient to show that the foreign entity has been or will continue doing business as defined by the regulation. 8 C.F.R. § 103.2(b)(3) requires that any document

containing foreign language submitted to the CIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. In the instant case, the monetary figures are in Rupees and have not been translated to U.S. currency equivalents. Without a translation the CIS cannot find that the documents submitted support the contention that the foreign entity has been doing business. The petitioner has failed to establish that the foreign entity will remain a viable business entity, thus bringing into question the U.S. entity's ability to continue to qualify as an organization doing business in the United States, and at least one other country during the requested period of approval.

Furthermore, the evidence fails to establish that the U.S. entity is doing business in that it is providing a regular, systematic, and continuous provision of goods and/or services. The petitioner failed to comply with the director's specific requests for tax documents covering the year 2001. Likewise, the petitioner has failed to present plausible explanations to overcome the director's objections. Although the petitioner submitted letters of confirmation from business establishments, there is no concrete evidence to show that the petitioner engaged in a regular, systematic, and continuous provision of goods and/or services during the 2001 business year. The letters fail to specify the dates services were received and there is no evidence to show that the petitioner received any form of compensation for such services. There is nothing in the record to demonstrate that the U.S. entity was compensated for any of the research papers, publications, or articles produced by [redacted] Although there may be evidence to show that the petitioner's rent has been systematically paid over time, there is nothing in the record to establish that business was actually conducted at the business site. Based upon the evidence of record, the petitioner spent the majority of his time abroad attending conferences and marketing his services. There is noting in the record to demonstrate that the beneficiary's attendance at the international conferences, seminars, and workshops can be considered as "doing business" pursuant to the regulations. There has been no independent documentary evidence submitted to show that anyone, other than the beneficiary, is actually employed by the U.S. entity. For this additional reason, the petition may not be approved.

The third issue in this proceeding is whether the petitioner has established that the beneficiary is primarily employed in a managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

> The term "managerial capacity" means an assignment within an organization in which the employee primarily—
>
> (i) Manages the organization, or a department, subdivision, function, or component of the organization;
>
> (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
>
> (iii) If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly

supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

> The term "executive capacity" means an assignment within an organization in which the employee primarily—
>
> (i) Directs the management of the organization or a major component or function of the organization;
>
> (ii) Establishes the goals and policies of the organization, component, or function;
>
> (iii) Exercises wide latitude in discretionary decision-making; and
>
> (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner stated in the petition that the beneficiary has been responsible for planning strategic goals and for advising clients. The petitioner further asserted that the beneficiary would be responsible for promoting the foreign firm in the United States, and for formulating and implementing operational policies. In a letter of support dated February 28, 2002, the petitioner described the beneficiary's title as manager and head of the branch, legal service provider and sole proprietor.

In response to the director's request for additional evidence on the subject, the petitioner described the beneficiary's duties as:

> During the past one year the beneficiary has carried out several managerial and executive work such as advising clients on structuring of joint ventures, advising clients on legal and tax issues related to setting up of a new mutual fund, advising on issues related to characterization of payment, royalty, etc. advising on taxability and structuring of bundled application service contract, advising on structure for investments in India and taxation on interest payments, advising on entry into India and providing strategy for the same, etc. . . .

As evidence, the petitioner submitted copies of international conferences attended by the beneficiary, a list of clients attended, and letters of confirmation from various business entities. The petitioner also submitted tax records for the year 2000.

The director determined that the record did not establish that the beneficiary is primarily employed in either a managerial or an executive capacity. The director noted that the petitioner stated its firm was established in 2000, had one employee, and was engaged in the practice of international law. The director stated that the evidence of record showed that the beneficiary has been out of the United States since the filing of the instant petition. The director subsequently concluded that the beneficiary was not primarily performing managerial or executive job duties in the United States.

On appeal, the petitioner argues that the beneficiary's temporary absences from the United States do not thwart the day-to-day activities of the firm. The petitioner also argues that there is another individual employed by the U.S. entity, and that the entity intends to hire additional employees in the future.

The record as presently constituted does not demonstrate that the beneficiary is employed by the U.S. entity in a primarily executive or managerial capacity. The record reveals that the petitioner has been established for more than one year at the time the petition was filed. Therefore, it is not to be considered a new office pursuant to 8 C.F.R. § 214.2(1)(1)(ii)(F) for purposes of evaluating the beneficiary's proposed position. The petitioner infers throughout the record that the U.S. entity is still in its developmental stages. However, 8 C.F.R. § 214.2(1)(3)(v)(C) allows the intended operation one year within the date of approval of the new office petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. The petitioner has failed to present sufficient evidence to establish that it has reached the point where it can employ the beneficiary in a predominantly managerial or executive position.

Although the petitioner infers that the beneficiary will be responsible for the day-to-day development and operation of the U.S. firm by planning strategic goals, advising clients, formulating, and implementing operational policies, there has been no documentary evidence submitted detailing how he will carry out those duties. Furthermore, the petitioner does not clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A petitioner must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. The petitioner must demonstrate that the beneficiary's responsibilities will meet the requirements of one or the other capacity. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The beneficiary's job duties are described as providing professional legal consultation and tax advisory services to clients. The evidence of record shows that the beneficiary spends much of his time outside of the United States. For example, the record shows that the beneficiary spent 111 days in India and 58 days in the United States in 2002. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that he directs the management of the U.S. entity. There is no evidence submitted to show what percentage of time is attributed to each of the beneficiary's duties. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Based upon the evidence submitted it does not appear that the reasonable needs of the petitioning company would plausibly be met by the services of the beneficiary as branch manager. The petitioner asserts that the

U.S. company employs two individuals and anticipates further expansion of personnel in the future. The petitioner further contends the beneficiary performs managerial or executive duties in that he will manage and coordinate all operations and business transactions on behalf of the U.S. entity. The petitioner provided a list of non-qualifying duties to be carried out by the U.S. entity's other employee. Contrary to the petitioner's contentions, the record does not demonstrate that the U.S. entity employs other employees. The petitioner submitted a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return for the quarter ending September 30, 2001, which indicated that there were no employee salaries or wages paid during that period. 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 petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The petitioner has not demonstrated that it has reached or will reach a level of organizational complexity wherein the hiring and firing of personnel, discretionary decision making, and setting company goals and policies constitute significant components of the duties performed by the beneficiary on a day-to-day basis. Nor does the record demonstrate that the beneficiary manages an essential function of the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii).

In review of the entire record, the petitioner has failed to establish that a qualifying relationship exists between the U.S. and foreign entities; that the U.S. and foreign entities are doing business; or that the beneficiary is employed primarily in a managerial or executive capacity. Accordingly, the appeal will be dismissed.

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.