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

U.S. Citizenship and Immigration Services

D7

[redacted]

FILE: WAC 02 189 50444 Office: CALIFORNIA SERVICE CENTER Date: JUN 30 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 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 established in 1999 and claims to be in the business of international trading and wholesaling of electronic products. The petitioner claims to have a subsidiary relationship with [redacted] located in Shanghai, China. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president for a period of three years, at a monthly salary of $5,500.00. The beneficiary was initially granted a one-year period of its 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 evidence of record was insufficient to establish that a qualifying relationship existed between the U.S. entity and a foreign entity.

On appeal, counsel disagrees with the director's decision and states that the evidence is sufficient to demonstrate that that a parent-subsidiary relationship exists between the U.S. and foreign entities.

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.

(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 issue in this proceeding is whether the petitioner has submitted sufficient evidence to establish that a qualifying relationship exists between the U.S. entity and a foreign entity.

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.

The petitioner initially stated in the petition that the foreign entity owned 100 percent of the U.S. entity. In a letter of support, dated April 8, 2002, counsel for the petitioner stated that the U.S. entity was a "wholly-owned subsidiary of [redacted] of China." Counsel also stated that the U.S. entity was in the business of international trade and distribution of the foreign entity's products throughout North America. The petitioner submitted as evidence copies of the U.S. entity's Articles of Incorporation (CA); Certificate of Authority (NJ); by-laws; minutes of organizational meeting; share certificate and stock ledger; Form 1120, U.S. Corporate Income Tax Return for 1999, 2000, and 2001; and bank statements. The petitioner also submitted copies of the foreign entity's list of owners, financial statements, company brochure, and other business documents.

The director subsequently submitted a request for evidence in which he noted the many inconsistencies in the record regarding the ownership of the petitioning entity. The director stated that although the corporate documents indicated that the petitioning entity was wholly owned by the foreign entity, the company's tax records indicated that it was owned by the foreign entity and [redacted] As evidence of a qualifying relationship, the director requested the petitioner to submit proof of stock purchase, minutes of the meeting-stock ownership, date-stamped Articles of Incorporation, all stock certificates issued to the present (both front and back), and the corporate stock ledger showing all stock certificates issued to the present date.

In response to the director's request for evidence, counsel stated that although [redacted] has business relations with the petitioning entity, it is not a shareholder of the same. Counsel stated that the petitioning company had hired an independent [redacted] to explain the inconsistencies in the record. The petitioner submitted copies of [redacted] resume and letter of explanation. The petitioner also submitted copies of the petitioning entity's share certificate issued to the foreign entity, stock ledger, and a copy of [redacted] share certificate issued to the foreign entity.

The petitioner submitted as evidence a summary of [redacted] education and experience as an attorney in the state of California, and a letter from [redacted] stating that the issuance of the petitioner's shares to the foreign entity was valid and in compliance with California Corporate Law. The petitioner submitted a copy of Unanimous Written Consent by the Board of Directors [redacted] dated January 10, 1999, allowing the foreign entity time to submit the agreed upon share consideration. The petitioner also submitted a translated copy of a certification, signed and dated July 11, 2002, from the foreign entity authorizing the wire transfers to the petitioning entity. The petitioner submitted copies of the two wire transfers from the foreign entity to the petitioning entity, dated August 24 and August 25 of 1999, in the amounts of US$60,000 and US$200,000 respectively. In the wire transfers, the foreign entity's authorized financial representative indicated in the "details of payment" section "payment for technical coperation."

The director subsequently denied the petition, determining that evidence in the record was insufficient to establish that a qualifying relationship existed between the petitioning entity and the foreign entity. The

director noted the inconsistencies found in the petitioning entity's tax records and the explanation given by the independent [redacted] The director stated: "If, as the [redacted] .says, [redacted] owns no shares of [redacted] then there is a rather large discrepancy in the petitioner's Federal corporate tax return for the year 2000, because the Form 5472 clearly states that [redacted] owns 25% of the petitioning entity." The director further stated:

> Although the CPA states that [redacted] was listed on the Form 5472 because it was considered as a foreign related party under the definition of the Internal Revenue Code Section 267(b) even though it did not own any shares of the petitioning entity-the petitioner did not provide a copy of Section 267(b) of the Internal Revenue Code to support its claim that the petitioner was required to list [redacted] as a related party.

The director continued by pointing out the multiple discrepancies and inconsistencies contained in the record with regard to the ownership of the petitioning entity. The director noted the discrepancies and inconsistencies contained in the petitioning entity's tax records (Form 1120 and Form 5472), wire transfers, bank statements, number of stock certificates issued, and company brochure. The director concluded that the evidence was inconsistent, contradictory, and insufficient to establish that there exists a subsidiary or affiliate relationship between the petitioning entity and the foreign entity.

On appeal, counsel disagrees with the director's decision and asserts that [redacted] does not own any shares of stock in the petitioning entity, that the foreign entity owns 100 percent of the petitioning entity's stock, that the mishap in the tax records were due to accounting errors, and that the wire transfers were partially to pay for the U.S. entity's stock. As evidence the petitioner submitted an amended IRS Form 5472 for 2000 and 2001, in which the space designated "Part II-25% Foreign Shareholder" had been left blank. The petitioner also submitted an amended Form 1120X for the years 2000 and 2001; a copy of Internal Revenue Code Section 267(b); copies of [redacted] IRS Form 1120 for the years 1999 and 2000; a U.S. entity bank statement for August of 1999; copies of company brochures; a declaration, dated September 3, 2002; and a letter from the petitioning entity's accountant, dated August 30, 2002.

The petitioner's evidence is not persuasive. In the instant case, the petitioner is obligated to clarify the inconsistent and conflicting evidence by independent and objective evidence. The statements submitted on appeal do not persuasively establish the truth of the facts asserted. Cf. *Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). Merely asserting that the reported corporate income tax return contained inaccurate information does not qualify as independent and objective evidence. 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).

There is nothing in the record to demonstrate that the petitioner was required to list [redacted] as a "related party" on the Form 5472. The AAO notes that the explanations given for the multiple mistakes made in the petitioning entity's tax records are insufficient to account for the unaccounted for 677,239 shares of stock. 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 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). 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).

On review, the record does not reflect that a qualifying affiliate or subsidiary relationship exists between the U.S. and foreign entities.

Further, if the AAO were to accept the petitioner's evidence and explanations as consistent, then it would bring into question the validity of the initial "new office" petition filed by the petitioner. In this matter the initial "new office" petition was received by Citizenship and Immigration Services (CIS) March 25, 1999, and approved from June 1, 1999 to June 1, 2000 (See I797B, dated April 15, 1999). The petitioner submitted evidence that demonstrated 162,545 shares of U.S. entity stock were recorded as being issued to the foreign entity on January 5, 1999. The evidence also demonstrates that in the petitioning entity's Unanimous Written Consent of the Board of Directors, dated January 10, 1999, it was stated in part:

> WHEREAS, [redacted] has had difficulty wiring the funds for the Shares and the Board believes it is in the best interest of the Corporation to provide [redacted] additional time to transfer the funds.
>
> NOW, THEREFORE, BE IT RESOLVED, that the Corporation shall issue the Shares to [redacted] for the consideration previously approved by the Board and that until such consideration is received the Corporation shall hold the certificate. Upon receipt of the funds the certificate shall be delivered to [redacted]

The petitioner claims that the foreign entity did not pay for or receive its 162,545 shares of stock in the petitioning entity until after August 25, 1999, thus bringing into question the existence of a qualifying relationship between the U.S. and foreign entities at the time the initial "new office" petition was filed on behalf of the beneficiary. Again, 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. at* 591-92. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that it is eligible for an extension of the initial one-year "new office" validity period. As previously noted, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides strict evidentiary requirements that the petitioner must satisfy prior to the approval of this extension petition. Upon review, the petitioner has not satisfied all of the enumerated evidentiary requirements. The petitioner has not submitted evidence to demonstrate that the beneficiary is employed by the U.S. entity in a primarily managerial or executive capacity as required by section 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § §1101(a)(44)(A) and (B). The evidence submitted demonstrates that the petitioning entity employs five employees. The petitioner stated in part that the beneficiary's duties consisted of overseeing the company's business, exercising authority over personnel decisions, implementation of company policies, establishing the company's expansion and development plans, exercising discretion over the day-to-day operations of the business, and negotiating and signing contracts. The petitioner also stated that the beneficiary is a functional manager, and that the majority of his duties relate to operational and policy

management. Contrary to the petitioner's contentions, rather than providing a specific description of the beneficiary's duties, the petitioner generally paraphrased the statutory definition of executive capacity. *See* section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). There is insufficient evidence to establish that the beneficiary manages a function of the organization, or that he supervises managerial, professional, or supervisory staff who relieve the beneficiary from performing non-qualifying duties. Neither has there been sufficient evidence submitted to show that the beneficiary directs the management of the organization, establishes the goals and policies of the organization, or exercises wide latitude in discretionary decision-making. For this additional reason, the petition may not be approved.

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.2nd 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 rests solely 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.