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U.S. Citizenship and Immigration Services

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File: LIN 04 220 50568 Office: NEBRASKA SERVICE CENTER Date: AUG 03 2007

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)

IN 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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 visa petition seeking to extend the employment of its computer and information system manager as an L-1B nonimmigrant intracompany transferee having specialized knowledge 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 under the laws of the State of Illinois and is allegedly engaged in the business of importing office supplies.[1] 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 denied the petition concluding that the petitioner did not establish that it is a qualifying organization because it did not establish that it is "doing business" as defined in the regulations.

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 the director erred and that the petitioner, through both contractors and employees, provides goods and services to its customers.

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.

(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

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[1]It should be noted that, according to Illinois state corporate records, the petitioner's corporate status in Illinois was "involuntarily dissolved" on April 13, 2007. Therefore, as the State of Illinois has terminated its corporate existence, which prohibits the petitioner from carrying on any business except for taking action to wind up its affairs, the company no longer exists and can no longer be considered a legal entity in the United States. *See* 805 Ill. Comp. Stat. Section 12.40 (2006). Therefore, this would call into question the petitioner's continued eligibility for the benefit sought if the appeal were not being dismissed for reasons stated herein.

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)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The primary issue in the present matter is whether the petitioner has established that it is "doing business" and is thus a "qualifying organization."

As indicted above, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(A) states that a petition to extend a "new office" petition shall be accompanied by evidence that the United States and the foreign entity are still "qualifying organizations." Evidence establishing that the United States and foreign entities are qualifying organizations is similarly required for all individual petitions filed on Form I-129 seeking to employ a beneficiary pursuant to section 101(a)(15)(L) of the Act. *See* 8 C.F.R. § 214.2(l)(3)(i).

Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "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" and "is or will be doing business." "Doing Business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization." 8 C.F.R. § 214.2(l)(1)(ii)(H). A "subsidiary" is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, half of the entity and controls the entity." In this matter, the petitioner asserts that it is 100% owned and controlled by the foreign entity and is thus a "subsidiary" of the foreign entity.

In the initial petition, the petitioner provided no evidence establishing that it is "doing business" as defined in the regulations. On September 3, 2004, the director requested additional evidence. The director requested, *inter alia*, evidence that the United States entity has been doing business for the previous year and evidence of the financial status of the United States operation.

In response, the petitioner provided a letter dated November 19, 2004 in which it asserts that it "has been doing business." The petitioner explains that goods are shipped from Taiwan to customers in the United States and that maintenance of goods is performed by contractors in the United States. The petitioner does not provide any corroborating evidence other than an internally generated financial statement. The record is devoid of any objective evidence of business activity such as tax documentation, wage reports, invoices, bank statements, audited financial statements, or advertising materials.

On April 3, 2006, the director denied the petition concluding that the petitioner did not establish that it is a "qualifying organization" because it did not establish that it is "doing business" as defined in the regulations.

On appeal, counsel to the petitioner asserts that the United States operation is doing business. However, counsel does not provide any evidence to support his assertion.

Upon review, counsel's assertions are not persuasive.

As indicated above, in order to be classified as a "qualifying organization," the petitioner must establish that it is engaged in the regular, systematic, and continuous provision of goods and/or services. In this matter, the record is essentially devoid of any evidence of any business activity by the petitioner. Self-serving letters from the petitioner and its counsel and an internally generated financial statement are the only evidence provided by the petitioner in support of its contention that it is "doing business." Neither of these types of evidence establishes that the petitioner is providing goods or services in a regular, systematic, and continuous manner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, counsel's assertions on appeal are similarly unsupported by evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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. As the petitioner has not established its eligibility, the petition must be denied. The petitioner has not established that it is a "qualifying organization" because it did not establish that it is "doing business" as defined in the regulations.

Beyond the decision of the director, the petitioner also failed to establish that the foreign entity is a "qualifying organization" because it did not establish that the foreign entity is "doing business" as defined in the regulations. The record is similarly devoid of any objective evidence that the foreign entity is engaged in the regular, systematic, and continuous provision of goods and/or services. For this additional reason, the

petitioner has failed to establish that the foreign entity is a qualifying organization as required by 8 C.F.R. § 214.2(l)(14)(ii)(A) and 8 C.F.R. § 214.2(l)(3)(i), and for this reason the petition may not be approved.

Beyond the decision of the director, the petitioner has also failed to establish that it and the foreign entity have a qualifying relationship. 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 the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In this matter, despite the director's specific request for evidence of common ownership and control, the record is devoid of any evidence related to the ownership or control of the petitioner. As indicated above, the petitioner asserts that it is 100% owned and controlled by the foreign entity. However, the petitioner provided no evidence to support this assertion. The petitioner did not provide copies of any corporate organizational documents, stock certificates, tax documents, or other evidence which could establish ownership and control of the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (Comm. 1998). As the petitioner has failed to establish that it and the foreign entity have a qualifying relationship, the petition may not be approved for this additional reason.

Beyond the decision of the director, and for the same reasons articulated above, the petitioner failed to establish that it has been "doing business" for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). For this additional reason the petition may not be approved.

Beyond the decision of the director, an additional issue in this matter is whether the petitioner has established that the beneficiary will be employed in a capacity which involves specialized knowledge or that she possesses specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

> For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

> [S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In this matter, the petitioner described the beneficiary's purported specialized knowledge in a letter dated July 15, 2003. Counsel further described the beneficiary's purported specialized knowledge in a letter dated November 24, 2004. As these descriptions appear in the record, they will not be repeated here.

Although the petitioner asserts that the beneficiary's proposed position in the United States requires "specialized knowledge" and that the beneficiary possesses such "specialized knowledge," the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced personnel employed by the petitioner or in the industry at large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990). While the petitioner asserts that the beneficiary is required to have specialized knowledge of its products, the petitioner has not adequately established the material difference between its products and its competitors' products which would require the beneficiary to have "specialized knowledge." For this additional reason, the petition may not be approved.

Beyond the decision of the director, an additional issue in this matter is whether the beneficiary has established that the beneficiary has at least one continuous year of full-time employment abroad within the three years preceding the filing of the initial "new office" petition. The initial "new office" petition was approved on December 10, 2003 (LIN 03 238 50689). The instant petition seeks to extend this initial "new office" petition. However, the petitioner asserts in the letter dated July 15, 2003 that the beneficiary "was employed by [the foreign entity] from 1993 to 1999." 1999 is more than three years before 2003. While the petitioner also asserts that, in 2001, the beneficiary left her employment with the foreign entity, the petitioner never explains this serious inconsistency in the record. 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). Moreover, while the petitioner asserts that the beneficiary left her employment with the foreign entity in 2001 to work in the United States in H-1B visa status, the petitioner does not establish, or even allege, that this H-1B employer has a qualifying relationship with the foreign entity. Therefore, as the petitioner has failed to establish that the beneficiary has at least one continuous year of full time employment abroad within the three years preceding the filing of the initial "new office" petition, the instant petition may not be approved for this additional reason.

The initial approval of an L-1A new office petition does not preclude Citizenship and Immigration Services (CIS) from denying an extension of the original visa based on a reassessment of petitioner's qualifications. *Texas A&M Univ.*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.