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U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

File: WAC 08 068 51310 Office: CALIFORNIA SERVICE CENTER Date: MAY 14 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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.[1]

The petitioner seeks to employ the beneficiary temporarily in the United States 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 U.S. petitioner, a corporation organized in the State of California that is engaged in dairy product production, seeks to extend the employment of the beneficiary as its executive director. The petitioner claims that it is the subsidiary of Kalleh Dairy Company located in Tehran, Iran.

The director denied the petition, determining that the petitioner had failed to establish that the petitioner and the organization which employed the beneficiary in Iran had a qualifying relationship.

The petitioner subsequently filed an appeal. On appeal, counsel for the petitioner submits a brief and additional evidence which seeks to clarify the petitioner's relationship with the foreign entity.

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 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

[1] It is noted that, according to California State corporate records, the petitioner's corporate status in California has been suspended. *See* http://kepler.ss.ca.gov/corpdata/ShowAllList?QueryCorpNumber=C2852543 (last accessed May 13, 2009). Therefore, the petitioner can no longer be considered a legal entity authorized to conduct business in the United States. 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).

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 management or executive capacity; and

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

The first issue in the present matter is whether the petitioner and the foreign organization are qualified organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The regulation defines the term "qualifying organization" as 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.

Additionally, the regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

(I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries.

(J) "Branch" means an operating 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, or

(*3*) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

In this case, the petitioner claims that the U.S. entity is the subsidiary of the Iranian entity. Specifically, on Form I-129, the petitioner claims that the Iranian entity is the sole owner of the petitioner.

The petitioner failed to submit documentary evidence in support of the claimed relationship with the Iranian parent company. Consequently, the director issued a request for evidence on January 14, 2008. In the request, the director specifically required the petitioner to submit evidence to definitively establish that the foreign entity had paid for its alleged ownership interests in the U.S. petitioner. In response to the director's request, the petitioner submitted several documents, including a stock certificate, a copy of the petitioner's IRS Form 1120, U.S. Corporation Income Tax Return for 2007, bank statements evidencing wire transfer deposits, and meeting minutes dated October 23, 2006.

Upon review of the evidence submitted, the director concluded that ownership of the petitioner could not be definitively determined from the evidence submitted. Specifically, the director noted that the wire transfers did not appear to originate with the claimed foreign parents, and the petitioner's Schedule K on IRS Form 1120 indicated that it was not owned, in whole or in part, by a foreign entity. The director subsequently concluded that the petitioner's claimed subsidiary relationship with the foreign entity was invalid, and as a result, the petition was denied on April 14, 2008.

The petitioner appealed the decision, asserting that an inadvertent oversight resulted in the erroneous declaration on the petitioner's Schedule K accompanying the IRS Form 1120. The petitioner submits a copy of an amended tax return now claiming that the Iranian entity is the 100% owner of the petitioner. In addition, the petitioner addresses the director's objection to the wire transfers, and claims that all transfers were made by the parent company through another one of its subsidiaries, namely, "Solico Import UND" based in Frankfurt, Germany.
Upon review of the record of proceeding, the petitioner has not established that it has the required qualifying relationship with the claimed Iranian parent company.

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 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*, 19 I&N Dec. at 595.

In this case, the petitioner has provided documentary evidence outlining the shareholder interests in the U.S. entity, and has supplemented this evidence with an amended tax return and copies of bank statements evidencing receipt by the U.S entity of numerous incoming wire transfers of varying amount in June 2006.

The AAO will first examine the stock certificate. As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

In this matter, the petitioner submitted stock certificate number [redacted], indicating that the Iranian company is the owner of 100,000 shares of the petitioner's stock. It is noted that the certificate is dated October 23, 2006. Upon review of other evidence in the record, the AAO acknowledges the receipt of meeting minutes dated October 23, 2006, whereby it is resolved that 100,000 shares of the petitioner's common stock would be issued to the Iranian entity. However, these documents alone are insufficient to establish eligibility.

The petitioner failed to submit any evidence that would reveal how many shares had been issued in total. For example, the articles of incorporation and the stock ledger, which were not submitted by the petitioner, would confirm how many shares of stock were in fact authorized and issued by the petitioner. Without knowing how many shares are actually issued, the AAO cannot determine that the 100,000 shares allegedly issued to

the Iranian entity represent all of the outstanding shares. Therefore, the meeting minutes alone are insufficient to confirm that the Iranian entity is the sole owner of the petitioner, since they represent only one action pertaining to the petitioner's stock.

The AAO also notes that the minutes do not state the purchase price for the 100,000 shares of stock issued to the Iranian entity. A review of the petitioner's Schedule K, accompanying Form 1120 for 2007, indicates that the petitioner has $500,000 in outstanding capital stock as of the filing of the 2007 return. However the petitioner also submitted a financial statement dated December 31, 2007 that shows a total of $2,962,382 in capital. The petitioner has not resolved this discrepancy. Therefore, it stands to reason that more shares of stock may have been issued by the petitioner since October 23, 2006, which would explain the increase in capital.

This factor brings the AAO to analyze the wire transfers, which the petitioner claims is evidence of payment for the 100,000 shares of the petitioner's stock. The record contains several of the petitioner's bank statements, issued by Washington Mutual in Chatsworth, California. The petitioner's bank statement for the period from May 12, 2006 to May 31, 2006 indicates that on May 26, 2006, a wire transfer in the amount of $10,000 was received; however, no confirmation of the originator is provided.

The Washington Mutual bank statement for the period from June 1, 2006 to June 30, 2006 indicates that the petitioner also received the following wire transfers:

06/02	$100,000
06/09	$101,000
06/14	$102,000
06/15	$103,000
06/20	$304,000
06/26	$305,000

The petitioner also submitted the Washington Mutual "Incoming Wire Transfer Notices" for five of the six wire transfers. These notices indicate that "SOLICO IMPORT UND" was the originator of the transfers that occurred between June 9 and June 26, 2006.[2] All five of the notices indicate in the memo or "Originator to Beneficiary Information" section that the transfers were for "RUECKERSTATTUNG DES DARLEHENS." The AAO notes that in English, the phrase indicates that the transfers were for "reimbursement of the loans"

[2] In German, the word "und" is a conjunction that translates as "and." Despite the abbreviated version of the originator's name on the wire transfer notice, "SOLICO IMPORT UND" or "Solico Import and" in English, the petitioner failed to identify the full name of the wire transfer originator. Indeed, even when the petitioner submitted the translated minutes of the Board of Director's meeting as evidence that the originator is an affiliate, the petitioner again referred to the incomplete name of the company. Additionally, the petitioner consistently capitalizes the German conjunction "UND" in the name, as if it were similar to "Inc." or "AG" or "GMBH." The petitioner's failure to identify the full name of the claimed German affiliate undermines the petitioner's claims.

- the phrase does not indicate that the funds were for the purchase of capital stock. The petitioner did not submit a wire transfer notice for the transaction that occurred on June 2.

The record suggests that the Iranian company purchased 100,000 shares of stock on October 23, 2006. However, no evidence of wire transfers corresponding with the date of purchase have been submitted. The petitioner claims that the wire transfers of June 2006 evidence the money transfers to cover the purchase of the petitioner's stocks.

This claim is insufficient for two reasons. First, the wire transfer notices clearly indicate that the funds were intended as "RUECKERSTATTUNG DES DARLEHENS" or "reimbursement of loans," and not for the purchase of capital stock. Second, the petitioner failed to provide documentation with regard to the purchase price for the stock. Therefore, it is impossible to match a specific wire transfer deposit with the purchase price of the stock. Finally, the petitioner did not reveal the full name of the originator of the wire transfers – "Solico Import und." The petitioner did not submit any documentary evidence in support of this claim, other than an unsupported declaration and a mention in the minutes of Kalleh Board of Director's meeting. 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)).

Although the petitioner claims that "Solico Import UND" is the subsidiary of the Iranian entity and submits the minutes of a Board meeting, the AAO will not consider this evidence. The petitioner was put on notice of required evidence, specifically, evidence proving that the Iranian entity purchased the stock, and was given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Nevertheless, even if the wire transfers could be determined to be legitimately from the Iranian entity, they still do not correspond with the shares of stock issued four months later. Additionally, the petitioner's claims are further undermined by the discrepancy between the $500,000 in capital stock, as represented by the petitioner's tax returns, and the $2,962,382 in capital, as represented on the financial statement dated December 31, 2007. 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).

On appeal, counsel seeks to clarify the wire transfer confusion and acknowledges that the petitioner's response to the request for evidence was insufficient. However, for the reasons discussed above, even if the petitioner could prove that the wire transfers in fact originated with the Iranian entity, there is no evidence to establish that these funds were actually allocated to the purchase of stock four months thereafter.

In addition, it is noted that the petitioner submits an amended tax return on appeal, which corrects its claims on Schedule K to reflect that it is 100% owned by the Iranian entity. Without a full explanation as to how the mistake was made, supported by independent evidence, the amended tax returns are insufficient. Again, the petitioner must resolve any inconsistencies in the record by independent and 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). Like a delayed birth certificate, the petitioner's amendment of tax returns years after the claimed transaction raise serious questions regarding 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).

For the reasons set forth above, the petitioner has failed to establish that the Iranian entity is the sole owner 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For this reason, the petition may not be approved.

The second issue, beyond the decision of the director, is that the minimal documentation of the petitioner's business operations raises doubts whether the petitioner is a qualifying organization doing business in the United States. Specifically, under the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2) a petitioner must demonstrate that it is engaged in the regular, systematic, and continuous provision of goods or services and does not represent the mere presence of an agent or office in the United States. The directed correctly noted that the petitioner's federal tax return for 2007 reflected no gross receipts, no cost of goods sold, and no profits. Although the petitioner claims that the U.S. entity is still in its start-up phase in accordance with its business plan, this reasoning is erroneous.

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of the new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year. The term "doing business" is defined in the regulations as "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." 8 C.F.R. § 214.2(l)(1)(ii).

There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. For this additional reason, the petition may not be approved.

The third issue, again not addressed by the director, is whether the petitioner is subject to economic sanctions.

On March 15, 1995, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act, 50 U.S.C. § 1701, to address "the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States" constituted by the

Government of Iran, including its support for international terrorism, efforts to undermine the Middle East peace process, and acquisition of weapons of mass destruction and the means to deliver them. E.O. 12957, 60 Fed. Reg. 14615 (March 17, 1995). The President subsequently issued Executive Order 12959 imposing more comprehensive sanctions to further respond to the Iranian threat. 60 Fed. Reg. 24757 (May 9, 1995). Finally, on August 19, 1997, the President issued Executive Order 13059 to consolidate and clarify the previous orders. 62 Fed. Reg. 44531 (August 21, 1997). Executive Order 13059 continues in effect. *See* 70 Fed. Reg. 12581 (March 10, 2005) ("Continuation of the National Emergency With Respect to Iran").

Executive Order 13059 and the regulations relating to Iranian economic sanctions must be applied when a United States petitioner requests nonimmigrant classification under section 101(a)(15)(L) of the Act for an Iranian citizen or national. The executive order specifically prohibits "the importation into the United States . . .of any goods or services of Iranian origin." E.O. 13059 at § 1. Executive Order 13059 also prohibits "any transaction or dealing by a United States person . . . related to . . . services of Iranian origin." *Id.* § 2(d). The executive order defines a "United States person" as "any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States." *Id.* § 4(c).

In a policy memorandum dated January 15, 1998, the Immigration and Naturalization Service (INS) Office of General Counsel advised that the Executive Order 13059 requires the denial, or the revocation of an approval, of visa petitions predicated on the employment of Iranian citizens residing in Iran. *See* Lori Scialabba, INS Acting General Counsel, "Prohibition on Employment-Based Immigration from Iran," HQCOU 70/8.5P (Jan. 15, 1998). Relying on the United States Department of Treasury, Office of Foreign Assets Control (OFAC) interpretation of the implementing regulations, the memorandum states: "Given OFAC's holding that an employer in the United States may not lawfully make a binding offer of employment to an Iranian national residing in Iran, we believe that the Service *should deny an employment-based immigrant or nonimmigrant visa petition* filed by an employer seeking to do so." (Emphasis added.)

On April 26, 1999, the Office of Foreign Assets Control subsequently amended the regulations to allow certain Iranian-origin services in the United States related to specific visa categories, including the L nonimmigrant visa. 64 Fed. Reg. 20168 (April 26, 1999). The regulation at 31 C.F.R. § 560.505(c) states the following:

> Persons otherwise qualified for a visa under categories E-2 (treaty investor), H (temporary worker), L (intra-company transferees) and all immigrant visa categories are authorized to carry out in the United States those activities for which such a visa has been granted by the U.S. State Department, *provided that the persons are not coming to the United States to work as an agent, employee or contractor of the Government of Iran or a business entity or other organization in Iran.*

(Emphasis added.)

In the present matter, the petitioner claims to be the wholly-owned subsidiary of an Iranian business entity and the beneficiary is a citizen of Iran who was previously employed by the Iranian business in Tehran, Iran.

According to the petitioner's assertions, the beneficiary would be coming to the United States to work as the executive director of an Iranian-owned business entity. Accordingly, there is a clear nexus between the beneficiary and an Iranian-based business, organization, or government entity. The AAO concludes that the petitioner is precluded by Executive Order 13059 from offering employment to the beneficiary.

For this additional reason, the petition must be denied.

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. 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.

ORDER: The appeal is dismissed.