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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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File: SRC 03 110 50310 Office: TEXAS SERVICE CENTER Date: **APR 04 2005**

IN RE: Petitioner:
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)

IN 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.

6 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 petition seeking to employ its general sales manager 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 petitioner is a corporation organized in the State of Florida that is engaged in the distribution of packing supplies and machinery. The petitioner claims that it is a branch office of Marzullo and Fernandez Distribuciones C.A. located in Venezuela. The beneficiary is seeking L-1A status for a period of two years to open the new office in the United States.

The director denied the petition concluding that (1) the petitioner has not secured sufficient physical premises to house a new office; (2) the petitioner has not established that the beneficiary's job duties for the foreign company are managerial or executive in nature; and (3) the petitioner has not established that the United States entity has a qualifying relationship with the foreign entity. In her decision, the director stated that the articles of incorporation for the foreign and U.S. companies were not included in the documentation, but noted these documents were referenced in the letter submitted by counsel for the petitioner.

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 provides a brief statement. The petitioner asserts that the agreement it signed with a company that provides mail service, telephone answering service, and fax and copy services, is "a good solution at the moment" and that the company will secure an office and warehouse when the L-1 is approved. The petitioner also states that it believed the articles of incorporation for both companies had been submitted with the initial petition and submits these documents on appeal.

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 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.

Further, the regulation at 8 C.F.R. § 214.2(l)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The AAO notes that the petitioner has not disputed on appeal the director's finding that there was insufficient evidence to establish that the beneficiary was employed in qualifying capacity with the foreign entity for at least one year out of the three years preceding the filing of the petition. Accordingly, the AAO hereby affirms the decision of the director on this issue.

The first issue in the present matter is whether the petitioner has secured sufficient physical premises to house the new office.

The petitioner submitted no evidence that it had secured office space with the initial petition. Accordingly, on June 25, 2003, the director issued a request that the petitioner submit evidence of the lease/purchase of facilities in which to conduct U.S. business. In response, the petitioner submitted an agreement with a company that provides such basic office services as telephone and voice mail, mailing services, copy and fax services. The company also rents out office space in half-hour increments. The director correctly noted that this agreement does not constitute evidence of sufficient physical premises to house the new office under 8 C.F.R. § 214.2(l)(3)(v)(A). On appeal, the petitioner argues that the “intelligent office seems to be a good solution at the moment” but states that a new lease for office and warehouse space will be submitted. The petitioner has submitted no additional documentation. Furthermore, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Accordingly, the petitioner has not overcome the director’s finding that it had not met the requirements for establishment of a new office under 8 C.F.R. § 214.2(l)(3)(v)(A), and the director’s decision to deny the petition on these grounds is affirmed.

The final issue in this case is whether there is a qualifying relationship between the petitioner and the beneficiary’s foreign employer. The director noted in her decision that “counsel’s letter states that copies of the foreign company’s Document of Incorporation and the U.S. company’s Articles of Incorporation were submitted. However, this evidence could not be found in the documentation to prove that the companies are qualifying organizations.”

On appeal, the petitioner does not challenge the director’s finding on this issue. The petitioner merely states that it thought the articles of incorporation were previously submitted, and attaches copies of the documents to its brief. However, the record reflects that these documents were in fact included with the petitioner’s initial submission, and that the director reviewed the U.S. company’s Articles of Incorporation, which are specifically referenced in the request for evidence issued on June 25, 2003.

As the director erred in her statement that the articles of incorporation were not submitted, and as it is not clear that she ever reviewed the articles of incorporation for the foreign company, the AAO will review this issue on appeal.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) define a qualifying organization as a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly on 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 directory or though 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.

In pertinent part, 8 C.F.R. §§ 214.2(l)(1)(ii)(I, (J), (K) and (L) define "parent," "branch," "subsidiary," and "affiliate" as:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

* * *

Branch means an operation or division or office of the same organization housed in a different location.

* * *

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.

* * *

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 its initial submission, the petitioner stated on the Supplement to Form I-129 that the companies have a branch relationship and described the company ownership as "40% ownership [redacted] 40% [redacted] 20% [redacted]". In a letter dated February 24, 2003, which was appended to the petition, counsel stated that the petitioner's foreign employer is the petitioner's parent company and that it owns 75% of the U.S. company. The petitioner's articles of incorporation indicate the same owners and division of ownership stated on the Supplement to Form I-129. The foreign company's articles of incorporation indicate that the beneficiary and [redacted] each own 1,000 shares of the company's 2,000 shares of issued stock.

On June 25, 2003, the director issued a request for evidence and noted the ownership structure for the United States entity as described in the articles of incorporation. Specifically, the director requested evidence that the foreign company is owned by the same group of individuals, each individual owning and controlling approximately the same share.

In response to the director's request, counsel for the petitioner stated that the foreign company owns 40% of the overall stock of the U.S. company, the beneficiary owns 40%, and the beneficiary's son, [REDACTED], owns the remaining 20%. Counsel refers to "enclosed documentation to support this representation" but the record contains only the articles of incorporation for the two companies. The petitioner did not address the issue of the foreign company's ownership, as requested by the director.

Upon review of the record, the AAO cannot determine that there is a qualifying relationship between the U.S. company and the beneficiary's foreign employer. As described above, the record contains inconsistent assertions regarding the claimed relationship between the two companies and their ownership structure. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92. While it appears that the foreign company and the U.S. company share some common ownership, the petitioner does not appear to have a majority shareholder. Without documentation, the AAO cannot determine who in fact controls the U.S. entity.

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 International*, 19 I&N Dec. at 595.

As general evidence of the petitioner's claimed qualifying relationship, stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws and the minutes of relevant annual shareholder meetings must be examined to determine the total number of shares issued, the exact number issued to each 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 companies, and any other factor affecting actual control of the entities. See *Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In the request for evidence, the director requested that the petitioner submit evidence of the ownership of the foreign company. This evidence is critical, as it would have established whether a qualifying relationship exists between the two companies. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petitioner. 8 C.F.R. § 103.2(b)(14). For this additional reason, the petition will not be approved.

Beyond the decision of the director, the record does not contain evidence: describing the scope of the entity, its organizational structure and its financial goals; showing the size of the United States investment, the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and depicting the organizational structure of the foreign entity, as required by 8 C.F.R.

§ 214.2(l)(3)(v). As the appeal will be dismissed on the grounds discussed, these issues need not be addressed further.

In visa petition proceedings, the burden of providing 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.