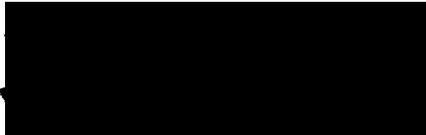


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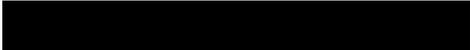
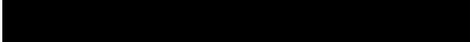
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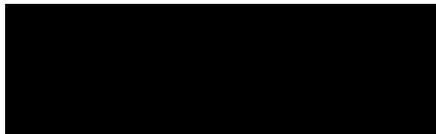
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FILE: LIN 02 235 52617 Office: NEBRASKA SERVICE CENTER Date: **AUG 11 2005**

IN RE: Petitioner: 
Beneficiary: 

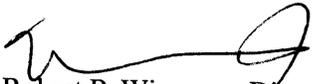
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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

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

According to the information contained in the record, the petitioner was established in 1995 and claims to be in the business of selling semiconductors and electronic components. The petitioner claims to be a subsidiary of [REDACTED] located in Seoul, Korea. The petitioner seeks to employ the beneficiary temporarily in the United States as its sales manager for three years, at an annual salary of \$30,000.00. The director determined that the petitioner had failed to establish: (1) that a qualifying relationship existed between the U.S. and foreign entities; or (2) that the beneficiary had been employed in a qualifying capacity by a qualifying organization abroad for one continuous year within three years preceding the filing of the petition.

On appeal, counsel contends that a qualifying relationship does exist between the U.S. and foreign entities, and that the evidence establishes that the beneficiary was employed in a qualifying capacity by a qualifying organization abroad for one continuous year within three years preceding the filing of the petition.

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 (1)(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 first issue in this proceeding is whether a qualifying relationship exists between the U.S. and foreign entities.

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

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.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii) define, in pertinent part, "parent," "branch," "subsidiary," and "affiliate" as:

- (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 claims to be a subsidiary of the foreign entity. The petitioner submitted a copy of a letter dated May 27, 2002, in which Dong II Lee stated that he, as president of Big Shine Worldwide, owned the Englewood Cliffs, NJ; Los Angeles, CA; and Bloomingdale, IL offices, and that all offices were related as subsidiary companies. The petitioner also submitted an organizational chart depicting the United States offices and the foreign entity's hierarchy. The petitioner submitted a letter dated July 26, 2000, from the Central Registration Division in Illinois, certifying receipt of the Big Shine Worldwide request for certification of registration to do business. The petitioner submitted copies of its Application to Adopt an Assumed Corporate Name, Application for an Employer Identification Number, Illinois Business Registration Application, Application for Certification of Authority to Transact Business in the State of Illinois, Articles of Incorporation per the General Corporate Laws of California, Application for Certificate of Authority to transact business in New Jersey, Account Balance Certification from the Hanvit America Bank, a listing of the names and residential addresses of all directors and officers of the U.S. entity, financial statements, and corporate income tax returns. The petitioner also submitted copies of the foreign entity's Report of Standard Assessment for Corporate Tax and Prepaid Voucher.

In the request for evidence, the director stated:

[S]ubmit documentary evidence to establish the qualifying corporate interrelationship between the United States business entity and the foreign business entity Such evidence must establish common ownership and control between the foreign entity and the United States entity. Evidence of a qualifying relationship may include, but is not limited to, annual reports, statements from the organization's president or corporate secretary, articles of incorporation, financial statements, and/or evidence of ownership of all outstanding stock for both entities.

In response to the director's request for evidence on the subject, counsel stated that Dong II Lee was the owner and president of the foreign entity as well as the three United States companies. Counsel also stated that a letter written by Dong II Lee, dated May 27, 2002, as well as financial and incorporation papers, demonstrate Dong II Lee's ownership status. Counsel further referred the director to the company's organization chart that depicted Dong II Lee's position within the foreign entity as that of president. Counsel submitted a copy of a lease agreement, dated July 2, 2002, for the premises known as [REDACTED] to illustrate that the Illinois office had moved from its Bloomingdale site to its Schaumburg address.

The director determined that insufficient evidence had been submitted to establish that a qualifying relationship existed between the U.S. and foreign entities. The director stated that the evidence did not establish that Dong II Lee was the owner of the petitioning entity located in Schaumburg, Illinois. The director noted that no other documentation submitted by the petitioner established the ownership of the petitioning entity. The director also noted that while the documentation provided indicates that [REDACTED] is a representative of the foreign entity, it does not address the ownership of said entity and therefore does not establish a qualifying relationship between the U.S. and foreign entity.

On appeal, counsel argues that the petitioner submitted sufficient evidence to demonstrate that Dong II Lee owns both the U.S. and foreign entities. Counsel further argues that this ownership is evident from the number of times Dong II Lee's signature and name appears on the business and financial documents submitted on behalf of the U.S. and foreign entities. Counsel contends that the foreign entity does not use stock certificates to designate ownership.

On appeal, the petitioner submits copies of a Certificate of Employment for the beneficiary, and a restructured organizational chart for both the U.S. and foreign entities. The petitioner resubmits copies of the letter dated May 27, 2002, the letter from the Central Registration Division of Illinois, Report of Standard Assessment for Corporation Tax and Prepaid Voucher; U.S. entity's Articles of Incorporation, Verification of Financial Statements, and other financial documents.

The purpose of the L-1 visa category is to facilitate key personnel between companies in the United States and their associated firms abroad. All L-1 Intracompany Transferee petitioners must establish that a qualifying relationship exists between the U.S. and foreign entities. See Section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), 8 C.F.R. § 214.2(l)(1)(ii), 8 C.F.R. § 214.2(l)(3)(i), and 8 C.F.R. § 214.2(l)(1)(ii)(G). There must be a showing of commonality in the ownership and control of the U.S. and foreign entities. As noted by the director, the regulation at 8 C.F.R. § 214.2(l)(3)(i) states that the petition must contain evidence that the petitioner and the organization that employs or employed the beneficiary abroad are qualifying organizations.

The petitioner has not submitted sufficient evidence to establish that a qualifying relationship exists between the U.S. and foreign entities. The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between U.S. and foreign entities for purposes of a nonimmigrant visa petition. *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm. 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988) (in immigrant visa proceedings).

Counsel contends that Dong II Lee's name, title, and signature appear on the majority of business documents submitted by the petitioner, and that this demonstrates his ownership of both the foreign and U.S. entities. Contrary to counsel's belief, Dong II Lee's name, title, and signature alone are insufficient to establish ownership and control of the foreign and U.S. entities. The company's secretary and treasurer's name, title, and signature also appear on many of the corporate documents submitted by the petitioner, however, they are not said to be owners of the corporate entities. The documentation submitted demonstrates that the president, Dong II Lee, is a representative of the foreign entity and is authorized to sign documents on behalf of the U.S. entity, but this information alone fails to show that he is the owner of the companies. On appeal, the petitioner resubmits the letter listing the names and addresses of the three U.S. companies. There is no indication from that list that Dong II Lee owns a U.S. company located in Schaumburg, Illinois. In addition, the business documents submitted on behalf of the foreign entity are limited in scope and do not demonstrate the actual ownership or control over any entity. There has been no independent documentary evidence submitted to establish ownership or control over either the foreign or U.S. entities.

The evidence submitted by the petitioner did not address the question of whether a subsidiary relationship exists between the U.S. and foreign entities. However, in addressing the issue, there has been no evidence presented to establish who controls the U.S. entity. Likewise, the evidence of record fails to show who owns the foreign entity. Unsupported claims of ownership and control are 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 has not shown that it meets the regulatory definition of a qualifying organization. For this reason, the petition may not be approved.

A second issue in this proceeding is whether the petitioner has established that the beneficiary has been employed in a qualifying capacity by a qualifying organization abroad for one continuous year within three years preceding the filing of the petition.

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.

In a letter dated July 10, 2002, the petitioner stated that the beneficiary had been employed by the foreign entity since January of 2001. The petitioner also stated that the beneficiary has been employed as a general assistant in the sales department, was promoted to the position of assistant sales manager, and then to that of an overseas sales manager. The petitioner further stated that the beneficiary received certification in computer training and has received achievement awards for her sales efforts in local as well as international markets. The petitioner submitted as evidence: translated copies of the beneficiary's high school graduation certificate, certificate of completion for Web Master and Web Design, an achievement award in programming for networking overseas markets to the foreign entity, an achievement award in excellence for overseas sales by the foreign entity, National Technical Qualification Certificate as a computer program operating engineer, and a copy of the beneficiary's resume.

The beneficiary's resume indicated that she graduated from high school in February of 2001, and began employment with the foreign entity in January of 2001 as a general assistant. The resume also indicated that the beneficiary was promoted to an assistant manager position in September of 2001, and that she was again promoted within the same company to sales manager in April of 2002. Evidence of record demonstrates that the beneficiary attended Web Master computer classes from January 5, 2001, to June 30, 2001, and classes in Web Design from July 1, 2001, to December 10, 2001. The record also indicates that the petitioner traveled to the United States in April of 2002 on a B-1 visa. The petition in the instant matter was filed July 15, 2002.

In response to the director's request for additional evidence on this subject, counsel asserted that the beneficiary was working full-time for the foreign entity while attending computer classes in the evenings. Counsel further stated that the beneficiary began employment with the foreign entity in January of 2001 as a general assistant and, based upon her performance, was quickly promoted to assistant manager, and then to overseas sales manager. Dong II Lee asserted in a letter of support that the beneficiary's performance was outstanding. He also stated in that letter that he determined it was an opportune time to promote the beneficiary due to the rapid growth of the company.

The director determined that the petitioner had not submitted sufficient evidence to establish that the beneficiary had been employed abroad in a managerial, executive, or specialized knowledge capacity for one continuous year within the three years preceding the filing of the petition. The director stated that, at best, the evidence demonstrated that the beneficiary had been employed in a managerial capacity for only seven months prior to her arrival in the United States, and that she had failed to meet the statutory requirement of having worked in a qualifying capacity for one continuous year.

On appeal, counsel argues that the title "sales manager" was given to the beneficiary only to represent her upward mobility with the company. The petitioner submitted a copy of a certificate of employment from the foreign entity that indicates that the beneficiary was promoted to sales manager in April of 2002. The petitioner resubmits a copy of a letter written by Dong II Lee listing the beneficiary's managerial duties performed abroad.

Counsel's assertions are not persuasive. The beneficiary's high school diploma and resume indicate that she graduated from high school on February 14, 2001. In contrast, the petitioner asserts that the beneficiary began working for the foreign entity in January of 2001. There has been no evidence submitted to explain how the beneficiary was employed by the foreign entity prior to her graduating from high school, or how she was able to attend high school full-time while working simultaneously for the foreign entity full-time. 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, 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, Id.* If Citizenship and Immigration Services (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).

According to the employment certificate signed by Dong II Lee, the beneficiary's resume, and other documentary evidence submitted by the petitioner, the beneficiary was employed as a general assistant for the foreign entity from January of 2001 to September of 2001. The record also shows that she took computer science courses from January 5, 2001 through December 10, 2001. Although the petitioner submitted evidence to show that the beneficiary attended college in the evenings and worked full-time during the day, there has been no evidence submitted to explain the inconsistencies in the time period during which the beneficiary attended high school and the time period during which she took the computer courses. According to the record, the beneficiary was in high school full-time, while simultaneously taking night classes at college, while simultaneously working full-time for the foreign entity. 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, supra*.

The descriptions given by the petitioner of the beneficiary's job duties as assistant manager do not correlate with her education, training, or experience. Contrary to the director's decision, there is nothing in the record that indicates training and/or education received in high school or on the job that would equip the beneficiary with sufficient skills and knowledge to conduct sales training, provide performance reviews, hire and fire employees, or disseminate executive directives; therefore, his determination that the beneficiary qualified for seven months as an assistant manager in a managerial or executive capacity will be withdrawn. The beneficiary had not been out of high school one year when she was promoted to the assistant manager's position. There is no evidence in the record to demonstrate who or what the beneficiary was managing. There is nothing in the record to demonstrate how much time the beneficiary spent performing managerial versus other kinds of duties. The record indicates that the beneficiary was still taking computer classes at the time she was promoted to the assistant manager's position. In addition, there is nothing in the record that demonstrates the beneficiary's knowledge of semiconductors or their electronic components. The petitioner has not shown that the beneficiary had one year of continuous work experience as a manager or an executive during the three-year period preceding the filing of the petition. For this reason, the petition may not be approved.

Counsel asserts on appeal that the beneficiary's classification is that of an L-1B employee with specialized knowledge, not an L-1A classification. Counsel further contends that the beneficiary's title of sales manager is only to show her increased responsibilities within the foreign entity.

CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). If the petitioner believed that the beneficiary was eligible for this nonimmigrant visa classification as an employee who possessed specialized knowledge, the petitioner was required to request such classification when filing the petition. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). The petitioner clearly indicated in the petition that the classification sought for the beneficiary was L-1A. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc.

Comm. 1998). Furthermore, 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). A 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., supra*. If the petitioner wishes to seek classification of the beneficiary as an L-1B intracompany transferee, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

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 met that burden.

ORDER: The appeal is dismissed.