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**U.S. Citizenship  
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**FEB 18 2005**

File: SRC-03-250-54347 Office: TEXAS SERVICE CENTER Date:

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:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 extend the employment of its General 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 operates a car rental business under a franchise agreement. The petitioner claims that it is the subsidiary of [REDACTED] in Valenton, France. 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 has a qualifying relationship with the beneficiary's foreign employer.

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, counsel for the petitioner asserts that the evidence of record shows that the petitioner and the foreign entity possess a qualifying relationship. In support of this assertion, counsel submits a brief and additional evidence.

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.

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

- (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.
- (H) *Doing business* means 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.
- (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 the initial petition filed on September 16, 2003, the petitioner indicated that it is the subsidiary of the beneficiary's foreign employer, as the foreign entity owns 100 percent of the petitioner's stock. In an attached support letter, the petitioner explained that it purchased a car rental franchise, which constitutes its sole business activity.

On September 25, 2003, the director requested additional evidence. Specifically, the director requested information regarding the ownership and control of the petitioner and the foreign entity, including: (1) an indication of whether the petitioner is directly tied to the foreign entity, and whether the foreign entity exercises control over how the petitioner's business is conducted; (2) an indication of who is in control of the petitioner's car rental franchise; and (3) an explanation of the corporate relationship between the petitioner and the foreign entity.

In a response dated September 26, 2003, in part the petitioner submitted: (1) two statements describing its operations, the foreign entity's business, and the corporate relationship between the two; and (2) previously

submitted documents, including a purchase agreement that sets terms between the petitioner and its franchisor. In the first statement, the petitioner provided the following:

[The petitioner] is tied directly to the parent business . . . . [T]he parent company owns 100% of the [petitioner's] stocks and controls and determine[s] the business conducted for [the petitioner] . . . . The [petitioner] and [the beneficiary] as General Manager are in control of the car rental franchise . . . .

In the second statement, the petitioner stated:

[The petitioner] was organized in 2002 under the laws of the State of Florida. [The petitioner] is a company dedicated to the investment business. [The petitioner] has recently established the purchase of a franchise new operation business under the name of [REDACTED]. Both our foreign and U.S. companies continued to be "qualifying organizations" for intracompany transfers and will remain open and doing business during the full period of stay of [the beneficiary] in the United States.

Further, the second statement provided information regarding the national objectives and activities of the U-Save car rental franchisor.

On October 17, 2003, the director denied the petition. The director determined that the petitioner did not establish that it has a qualifying relationship with the beneficiary's foreign employer. Specifically, the director found that the petitioner does not exercise control over its operations in the United States, as the national franchisor exerts actual control through a restrictive agreement and its placement of a trainer on the premises for six months. The director asserted that the petitioner is merely acting as an agent of the franchisor.

On appeal, counsel for the petitioner asserts that the evidence of record shows that the petitioner and the foreign entity possess a qualifying relationship. In support of this assertion, counsel submits: (1) a brief; (2) a letter from the national franchisor discussing the control of the petitioner; and (3) a document titled "Addendum of Training, Consulting and Management Agreement," dated November 3, 2003, that amends the franchise agreement between the petitioner and the national franchisor. In the brief, counsel states:

The French company has purchased a "[REDACTED]" franchise as the investment for growth into the United States market. The franchise, [REDACTED] meets the control test because each Franchisee is free to run the day to day business as he sees fit. The franchisees are not agents of [REDACTED]. They are separate individuals or business entities and they maintain full ownership and control of their respective businesses. They are members of [REDACTED] of America and they pay a royalty to use the name and good will to rent cars. Pricing, local advertisement, inventory level, sell of inventory are all controlled by [the petitioner].

Upon review, a portion of the director's analysis will be withdrawn, yet the decision will be affirmed. 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 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.*, *supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In the instant matter, the evidence of record shows that the petitioner purchased a U-Save Auto Rental franchise on September 9, 2003. The purchase agreement provides that the national franchisor will provide marketing efforts, on-sight training, and good will for the benefit of the petitioner's auto rental business. However, the petitioner retains ultimate decision-making authority and control over its operations.<sup>1</sup> As stated above, the director found that the national franchisor holds actual control of the petitioner due to the franchise agreement, and that the petitioner is merely acting as an agent of the franchisor. The director's analysis on this issue will be withdrawn.

However, the submitted franchise agreement is problematic since it fails to demonstrate that the petitioner has been doing business for the previous year. *See* 8 C.F.R. § 214.2(l)(14)(ii)(B). As stated above, the petitioner submitted evidence that it purchased a car rental franchise on September 9, 2003. Additionally, the petitioner provided copies of its bank statements from January to September 2003. The petitioner provided no further documentation to show its business activity during the one-year period prior to filing the petition. The petitioner's bank statements do not identify the sources of deposits, such that the AAO can determine whether

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<sup>1</sup> As evidence that the petitioner retains control of its operations, the petitioner submitted a document titled "Addendum of Training, Consulting and Management Agreement," dated November 3, 2003, that amends the franchise agreement between the petitioner and the national franchisor. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Thus, as this addendum was signed after September 16, 2003, the date of filing the petition, it is not probative of the petitioner's eligibility as of the filing date and it carries no weight in this proceeding.

the funds were derived from business activity. As the petitioner purchased the car rental franchise seven days before filing the present petition, any business conducted through the franchise does not serve as evidence of business conducted throughout the one-year period prior to filing. The petitioner submitted a copy of the 2002 IRS Form 1120, U.S. Corporate Income Tax Return, for a company titled [REDACTED] that previously owned the [REDACTED] franchise. Yet, as the Form 1120 covers business activity by the U-Save franchise at a time when the petitioner did not own or operate it, it does not serve as evidence of the petitioner's business activity during that period. Thus, the evidence of record is not sufficient to show that the petitioner engaged in the regular, systematic, and continuous provision of goods and/or services throughout the prior year. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H). For this additional reason, the appeal will be dismissed.

Also beyond the decision of the director, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity as required by the regulation at 8 C.F.R. § 214.2(l)(3)(ii). When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* In the instant matter, the beneficiary's job description submitted by the petitioner was vague, paraphrased portions of the statutory definitions of "executive capacity" and "managerial capacity," and thus provided little insight into the true nature of the tasks the beneficiary will perform in the United States. *See* sections 101(a)(44)(A) and (B) of the Act. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.* The provided job description does not allow the AAO to determine the actual tasks that the beneficiary will perform, such that they can be classified as managerial or executive in nature. Further, while the petitioner states that the beneficiary will supervise three individuals including a sales manager, and fleet person, and a service agent, the petitioner has not established that these subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. Thus, the petitioner has failed to show that the beneficiary will be employed in a primarily managerial or executive capacity. For this additional reason, the appeal will be dismissed.

The AAO further notes that, as evidence of the ownership of the petitioner, the petitioner submitted its articles of incorporation and a stock certificate. The articles of incorporation reflect that the petitioner is authorized to issue 1000 shares of stock. The stock certificate shows that, on September 5, 2002, the foreign entity acquired 1000 shares of the petitioner's stock. Thus, this minimal evidence suggests that on September 5, 2002 the petitioner was a wholly-owned subsidiary of the foreign entity. The director could have reasonably inquired beyond the issued stock certificates, but elected not to do so.

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 AAO further notes that the petitioner submitted numerous foreign language documents purportedly pertaining to the foreign entity, yet without full translations. Because the petitioner failed to submit complete certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and is not accorded any weight in this proceeding.

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 this burden.

**ORDER:** The appeal is dismissed.

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