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U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 111 50283 Office: CALIFORNIA SERVICE CENTER Date: JUN 10 2005

IN RE: Petitioner: [Redacted]
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)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the decision of the director and remand the matter for a new decision.

According to the evidence contained in the record, the petitioner was incorporated July 23, 2002, and claims to be a Chinese Cuisine Restaurant. The petitioner claims to be an affiliate of DongChunHong restaurant, located in South Korea. It seeks to employ the beneficiary temporarily in the United States as a head chef for one year, at an annual salary of \$42,000.00. The director determined that the evidence submitted by the petitioner was not sufficient to establish that a qualifying relationship exists between the U.S. and foreign entities.

On appeal, counsel disagrees with the director's decision and states that the evidence submitted is sufficient to establish a qualifying relationship between the U.S. and foreign entities.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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)(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) further 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(1)(3)(vi) states that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a 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 business entity in the United States is or will be a qualifying organization as defined in paragraph (1)(1)(ii)(G) of this section; and
- C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

The issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the U.S. and foreign entities.

The pertinent regulations at 8 C.F.R. § 214.2(1)(1)(ii) define a "qualifying organization" and related terms as:

- (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 (1)(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.

* * *

- (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.

In the instant matter, the petitioner claims to be an affiliate of the foreign entity. The petitioner stated that the U.S. and foreign entities were affiliates in that the U.S. entity was 100 percent owned and operated by Je-Young Hwang, who owned 61 percent of the foreign entity. The petitioner initially submitted as evidence a copy of the U.S. entity's Articles of Incorporation, stock certificate number one, and Notice of Transaction. The petitioner submitted a copy of the foreign entity's Article of Association. In response to the director's request for evidence, the petitioner stated that [REDACTED] percent [REDACTED] percent of the ownership of [REDACTED]

The director denied the petition after determining that the petitioner failed to submit sufficient evidence to establish that a qualifying relationship existed between the U.S. and foreign entities as required by 8 C.F.R. § 214.2(l)(1)(ii)(G). The director stated that the main controller of both organizations was [REDACTED] but that he did not own and control approximately the same share or proportion of each entity. The director also stated the record showed that one individual owned the U.S. entity, and two individuals owned the foreign entity. The director concluded by stating that neither an affiliate nor a subsidiary relationship existed between the U.S. and foreign entities.

On appeal, counsel disagrees with the director's decision and asserts, "an individual person is a 'legal entity'." Counsel further asserts that [REDACTED] owns 61 percent of the foreign entity, and as such, the foreign entity is the subsidiary of [REDACTED]. Counsel contends that [REDACTED] owns 100 percent of the U.S. entity, and as such the U.S. entity is a subsidiary of [REDACTED]. Counsel further contends that both entities fall within the definition of affiliate "because they are each 'one of two subsidiaries which are owned and controlled by the same ... individual'." Counsel concludes by asserting that in as much as [REDACTED] owns and controls both entities as an individual, the two entities are affiliated.

On reviewing the petition and the evidence, the petitioner has established that a qualifying relationship exists between the U.S. and foreign entities. The evidence of record demonstrates that [REDACTED] owns 61 percent of the foreign entity and 100 percent of the U.S. entity, thus meeting the requirements as an affiliate relationship, since the same individual owns and controls both entities through majority ownership. In the instant matter, there has been a showing of commonality in the ownership and control of the U.S. and foreign entities. Therefore, the director's decision with respect to this issue will be withdrawn.

Although not directly addressed by the director, another issue is whether the beneficiary has been and will be employed in a specialized knowledge capacity, and whether the position to be filled in the United States requires specialized knowledge.

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

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

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

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

In this matter, the petitioner claims that the beneficiary has been and will be a head chef for its restaurants specializing in Chinese cuisine. The petitioner stated in the petition that the beneficiary had been and would be responsible for planning and directing food preparation, buying and preparation activities, daily examination of menus and dishes served, and participating in the hiring, supervising, and training of new chefs and cooks. In a letter of support, dated February 20, 2003, the petitioner stated that the beneficiary, while employed by the foreign entity, had undergone extensive chef training and participated in developing the chef-training program involving the culinary art of Chinese cooking.

In response to the director’s request for evidence on the subject, the petitioner stated, “the company seeks to transfer [the beneficiary] to the U.S. branch restaurant to provide training of newly hired chefs. . . .” The petitioner also stated, “[The beneficiary] is not only the Head Chef holding the specialized knowledge and skill involving the restaurant’s trade secret recipes; he is also one of the three who develops the Chef Training program.” Although counsel states that the petitioner is petitioning for L-1B intracompany transferee (an employee with specialized knowledge) status for the beneficiary, the record does not substantiate its claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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*, 19 I&N Dec. 582, 591 (BIA 1988). The petitioner submitted a copy of the U.S. entity’s IRS Form 1120, U.S. Corporate Tax Return for the year 2002, which showed the restaurant’s gross receipts or sales in the amount of \$147,915.00. The petitioner submitted copies of the U.S. entity’s payroll records, which showed that the U.S. entity employed 20 employees. The petitioner also submitted an organizational chart, which showed that the U.S. entity employed two cooks, and that two head chef positions remained unfilled.

Although the petitioner asserts that the beneficiary’s position requires specialized knowledge, the petitioner has not articulated any basis to the claim that the beneficiary has been and will be employed in a capacity requiring specialized knowledge. The petitioner states that the beneficiary is needed in the United States in order to train newly hired chefs, but that assertion is unsupported by evidence of a training program or the subject matter of that training. 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)).

Other than submitting a general description of the beneficiary's job duties, the petitioner has not identified any aspect of the beneficiary's position that involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. In this matter, the record shows that the beneficiary prepares Hunan dishes and supervises non-professional, non-managerial subordinate staff. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the position of head chef at other employers within the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra*. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). There has been insufficient evidence presented to demonstrate that the beneficiary has been and will be employed in a specialized knowledge capacity or that the beneficiary is to perform a job requiring specialized knowledge in the proffered position. For this reason, the petition will be remanded to the director for consideration of this issue.

In visa petition proceedings, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The decision of the director, dated April 16, 2003, is withdrawn. The petition is remanded to the director for entry of new decision which, if adverse to the petitioner, shall be certified to the AAO for review without requiring an additional appeal fee.