

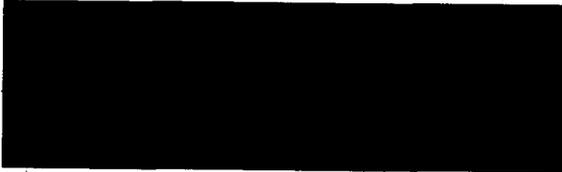
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D-7

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 14 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

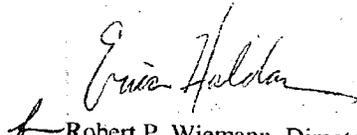
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

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.


Robert P. Wiemann, Director
Administrative Appeals Office

www.uscis.gov

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

The petitioner, [REDACTED] endeavors to classify the beneficiary as a manager or executive 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 claims to be an affiliate of [REDACTED] located in Canada and is engaged in the security alarm monitoring sales business. The initial petition was approved to allow the petitioner to open a new office. It seeks to extend the petition's validity and the beneficiary's stay for two years as the U.S. entity's general manager. The petitioner was incorporated in the State of Oregon on December 7, 1998 and claims to have one employee.

On March 12, 2003, the director denied the petition because the petitioner failed to establish that (1) a qualifying relationship existed between the petitioner and foreign entity; (2) the petitioner had been doing business; and, (3) the beneficiary had been and will be employed in a primarily executive or managerial capacity.

On appeal, the petitioner claims that: 1) "The company is viable, and doing business as per the regulations;" 2) "[The beneficiary] has been working in an LIA capacity for the last two years;" and, 3) "The business is of sufficient complexity to support an executive level position." The petitioner submits additional evidence in support of the appeal.

To establish L-1 eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. 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. Furthermore, 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.

In relevant part, the regulations at 8 C.F.R. § 214.2(l)(3) state 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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) requires that a visa petition under section 101(a)(15)(L) of the Act 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 (I)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (I)(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 managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The first issue in this proceeding is whether the petitioner has established a qualifying relationship with the foreign entity as required by 8 C.F.R. § 214.2(l)(3)(i).

The regulation at 8 C.F.R. § 214.2(l)(ii) defines the term "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 (I)(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.

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.

The Form I-129 petition was submitted on October 31, 2002 without a completed L Classification Supplement or documentary evidence to establish a qualifying relationship between the two entities.

On December 21, 2002, the director requested evidence to show that the petitioner and the foreign entity have a qualifying relationship. In particular, the director requested evidence that shows the common ownership and control between the foreign entity and the U.S. entity.

In response, the petitioner submitted a completed L Classification Supplement to Form I-129, and stating that the beneficiary owns the foreign entity and that the beneficiary and his wife own the U.S. entity. The petitioner submitted a copy of the certificates of incorporation for each company and recent bank statements.

On March 12, 2003, the director denied the petition because the petitioner failed to establish that a qualifying relationship existed between the petitioner and foreign entity. The director found that the documents submitted did not establish the ownership of the U.S. entity.

On appeal, the petitioner submits a copy of the U.S. company's minutes of the first meeting of the board of directors dated January 3, 1999, which indicates that the company's shares would be issued in equal shares to the beneficiary and his spouse.

On review, there is insufficient evidence to establish that a qualifying relationship exists between the petitioner and the foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G)(1). On the Form I-129, the petitioner claims that the U.S. organization is an affiliate of the foreign company. The petitioner claimed that the beneficiary and his wife equally own the U.S. entity and beneficiary owns 100 percent of the foreign entity. The petitioner submitted its articles of incorporation, the minutes of the first meeting, and bank statements. However, the petitioner submitted insufficient documentation to establish the ownership and control of the U.S. business and foreign entity. Although the minutes of the first meeting states that the U.S. corporation is "authorized to issue and deliver a certificate in the amount of 750 shares each" to the beneficiary and his wife, there is no evidence that the shares were actually transferred and the beneficiary and his wife actually paid for these shares. 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)).

Further, there is insufficient evidence to establish the current ownership of the foreign entity. A company resolution for the foreign entity confirms that the beneficiary received one class "A" common share of the company's stock on February 18, 1994, which, at the time was the only issued share. However, the foreign entity is authorized to issue 140,000 common and preferred shares. Without additional documentation, such as copies of all current and canceled share certificates and a share transfer ledger, the AAO cannot determine the total number of shares issued as of the date of filing or the company's current ownership. The petitioner has not substantiated its claim that the beneficiary owns the foreign entity.

After careful consideration of the evidence, the AAO concludes that the petitioner has not established that a qualifying relationship exists between the United States and foreign entities. For this reason, the petition may not be approved.

The second issue in this proceeding is whether the petitioning organization has been doing business for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as:

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.

On the Form I-129, the petitioner indicated that it had one employee at the time of filing and in 2001 achieved gross annual income of \$46,975.09.

On March 12, 2003, the director denied the petition because the petitioner failed to establish that it had been doing business. The director found that the petitioner's two bank statements showed minimal business activity and that one of the bank statements, dated December 9, 2002, indicated that the petitioner had closed its account. The director also found that based upon the petitioner's own statements it was unclear whether it had been or will be doing business.