

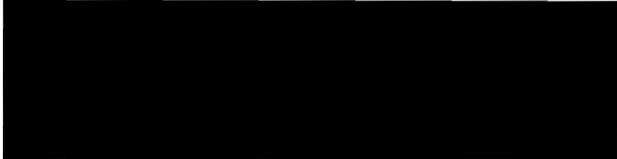


U.S. Citizenship
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Services

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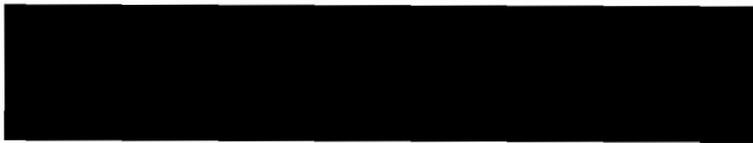
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File: SRC 04 209 53110 Office: TEXAS SERVICE CENTER Date: JUN 01 2006

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.

Robert P. Wiemann, Chief
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 seeks to employ the beneficiary temporarily in the United States 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 U.S. petitioner, a corporation organized in the State of Florida, is engaged in promotional and advertising services and seeks to employ the beneficiary as its director of international projects. The petitioner claims that it is the subsidiary of [REDACTED], located in Mexico City, Mexico.

The director denied the petition, determining that the petitioner had failed to establish that the petitioner and the organization which employed the beneficiary in Mexico were qualifying organizations.

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 submits a brief and additional evidence which seeks to clarify the petitioner's relationship with the foreign entity.

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 primary issue in the present matter is whether the petitioner and the foreign organization are qualified organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The regulation defines the term “qualifying organization” as 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.

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

(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 this case, the petitioner claims that the U.S. entity is an affiliate of the foreign entity. In a letter dated July 23, 2004, the petitioner provided an overview of the ownership structures of both entities. With regard to the foreign entity, the petitioner stated that it was 100% owned by the [REDACTED] family, namely, [REDACTED] and [REDACTED]

A document submitted with the petition entitled "Certificate Extraordinary of General Assembly of [REDACTED]" indicated that the percentage of ownership was as follows:

Name	Shares	Value
[REDACTED]	50	15,000
[REDACTED]	10	3,000

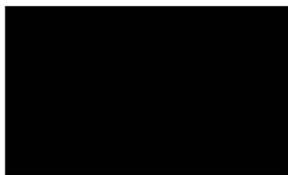
With regard to the U.S. entity, the petitioner stated that [REDACTED], and [REDACTED] owned 93.75% of the U.S. company. In support thereof, three stock certificates dated September 1, 2000 and numbered 6, 7, and 8, respectively, indicated that each of the [REDACTED] named above owned 250 shares of stock in the U.S. company. The certificates further stated that these shares were transferred from the Foreign entity, who, as evidenced by share certificate number 4 (not submitted) owned 800 shares in the U.S. entity.

Furthermore, the petitioner's U.S. Corporation Income Tax Return for the fiscal year 2000 indicated on Schedule E that [REDACTED] and [REDACTED] both owned 25 % of the U.S. entity. Finally, Schedule K, number 5, indicated that an individual or entity owned 74% of the U.S. entity, and referred to Statement 7 for further information. Statement 7, however, was not submitted.

The director found the initial evidence submitted with the petition to be insufficient to qualify the petitioner for the benefit sought and consequently issued a request for evidence on September 9, 2004. In the request, the director required the petitioner to submit evidence that definitively established its qualifying relationship with the foreign entity, including all stock certificates and the stock ledger. On September 23, 2004, the petitioner submitted a detailed response to the director's request which was accompanied by supporting documentary evidence regarding the ownership of the U.S. entity. With regard to the qualifying relationship between the U.S. and foreign entities, counsel merely submitted a statement regarding the nature of the relationship of the entities, and submitted additional stock certificates, an overview of the stock ledger, and the complete tax return for 2002 including statement 7.

Upon review of the evidence submitted, the director concluded that the U.S. entity was not majority owned or in the alternative that it was controlled by the foreign entity and was thus not a subsidiary of the foreign entity as defined by the regulations. Furthermore, the director noted that the petitioner was not 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, such that the entities could be deemed affiliates. Specifically, the director noted that in addition to sharing different owners with different portions of ownership, the evidence submitted in support of the ownership claims for the U.S. petitioner was inconsistent and contradictory, and therefore was not sufficient to clearly establish the true ownership of the petitioner. Consequently, the director denied the petition.

Counsel for the petitioner appealed the decision, asserting that the U.S. entity was in fact affiliated with the foreign entity by way of its common owners. In support of this contention, counsel asserts that much of the confusion in terms of ownership of the U.S. entity was the result of the petitioner's "imperfect record keeping." Counsel reasserts the claim of ownership, stating that the true ownership of the U.S. entity is divided as follows:

	33%
	33%
	33%
	1%

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*, 19 I&N Dec. at 595.

Upon review of the record of proceeding, the petitioner has not established that it has the required qualifying relationship with the foreign entity.

In this case, the petitioner has provided minimal documentary evidence in support of the shareholder interests in the U.S. and foreign entities, and has supplemented this evidence with explanatory statements which discuss the percentages of shareholder ownership. However, the random forms of evidence submitted, accompanied by the unsupported assertions of counsel and the petitioner do not establish the actual ownership of the petitioner. For example, with the petitioner, counsel asserts that  and  owned 93.75% of the U.S. petitioner at the time of filing. Stock certificates show that they each own 250 shares, but no evidence has been submitted, such as minutes of shareholders' meetings, to verify the total number of shares outstanding.

The petitioner's 2002 U.S. Corporation Income Tax Return claims under the Compensation of Officers section that [REDACTED] owns 25% and [REDACTED], not discussed by counsel or the petitioner in the petition, also owns 25%. However, Schedule K claims that 74% of the petitioner is owned by an individual or entity, and, when Statement 7 was submitted in response to the request for evidence, we learned that this 74% interest is shared among the [REDACTED] family in "various amounts."

Although the stock ledger was requested in the request for evidence, the petitioner merely submitted a document claiming that as of August 31, 2004, the stock ledger reflected ownership between [REDACTED] at 33% each, with 1% going to [REDACTED], first mentioned in this document.

The petitioner also submitted stock certificate number 5, issued to [REDACTED] on March 1, 1999, reflecting his ownership of 50 shares. This document, however, contradicts the claim on the 2002 tax return that Mr. [REDACTED] owns 25% of the company. According to the stock certificates, the ownership breakdown, if supported by evidence that these certificates represented all shares issued, would technically be:

Name	Shares
[REDACTED]	250
[REDACTED]	250
[REDACTED]	250
[REDACTED]	50

However, counsel and the petitioner continually make contradictory claims throughout the petition, ranging from the claim that the [REDACTED] family owns 93.75% of the U.S. entity, and that the [REDACTED] family owns 74% of the U.S. entity, or that the three [REDACTED] listed above own 99% of the U.S. entity. 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*, 19 I&N Dec. 582, 591 (BIA 1988).

In this case, the AAO finds that the evidence submitted by the petitioner is not credible due to the countless contradictions and inaccuracies. If 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).

Regardless of the actual ownership of the U.S. entity, it appears that the foreign entity is owned by 6 individuals. Regardless of whether three or four persons own the U.S. petitioner, as it continues to allege, the petitioner has not established that the same legal entity or individuals control both entities either directly or indirectly. In addition to its failure to establish the legal ownership interests of the U.S. entity, the petitioner has also failed to submit evidence of control, e.g., voting proxies or agreements to vote in concert so as to

establish a controlling interest. Based on the evidence submitted, it is concluded that the petitioner has not established that a qualifying relationship exists between the U.S. and foreign organizations.

Beyond the decision of the director, the record contains insufficient evidence to establish that the overseas company employed the beneficiary in a full-time position for one full year out of the three years preceding the filing of the petition. In this matter, the petitioner claims on the Form I-129 that the beneficiary was employed by the foreign entity from 1999 to December 2002, and notes no interruptions in the beneficiary's employment. However, the beneficiary's resume raises the question of whether the beneficiary's employment with the beneficiary was continuous, full-time employment within the required period.

Specifically, the beneficiary's resume indicates that she was a student at the Universidad Anahuac del Sur from 1998 to 2002, where she obtained a degree in business administration. Her resume also indicates that in 2002 she was employed by [REDACTED] as a "DKNY Sales and Marketing Manager." The petitioner has submitted no documentation, such as payroll records, to verify the beneficiary's continuous full time employment abroad with the foreign entity during the relevant period. Since the beneficiary's resume lists educational and professional obligations during the same period, it cannot be concluded without documentary evidence in the record that the beneficiary has satisfied this requirement. 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)). For this additional reason, the petition may not be approved.

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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.