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**U.S. Citizenship  
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File: WAC 02 074 53852 Office: CALIFORNIA SERVICE CENTER Date: JUN 04 2007

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:



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, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary 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 California corporation that claims to be engaged in the wholesale and retail sale of clothing. The petitioner states that it is a subsidiary of [REDACTED], located in Cairo, Egypt. The petitioner seeks to open a new office in the United States and has requested that the beneficiary be granted a two-year period of stay in L-1A status to serve as its vice president.<sup>1</sup>

The director denied the petition concluding that the petitioner did not establish that the petitioner has a qualifying relationship with the foreign entity.

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 director ignored evidence submitted to establish the ownership and control of the U.S. company and applied an inappropriate standard of proof. Counsel submits a brief and documentary evidence in support of the appeal.

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

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<sup>1</sup> Pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(i)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

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)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive 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 beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

The sole issue addressed by the director is whether the petitioner has established that a qualifying relationship exists between the U.S. company and the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

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

- (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[.]

\* \* \*

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

\* \* \*

(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 nonimmigrant petition was filed on December 27, 2001. On the L classification supplement to Form I-129, the petitioner indicated that it is a subsidiary of the beneficiary's foreign employer and described the stock ownership of each company as follows:

[REDACTED] in Egypt is owned 100% by [REDACTED]. The [U.S.] company is owned 50% by [REDACTED], 25% by [REDACTED] and 25% by [REDACTED].

The petitioner submitted copies of its by-laws, minutes of its organizational meeting and stock certificates, which confirm ownership of the U.S. company as follows:

[REDACTED] 5,000 shares  
[REDACTED] 2,500 shares  
[REDACTED] 2,500 shares

With respect to the ownership of the foreign entity, the petitioner submitted a Certificate of Particulars for [REDACTED] indicating that she has been registered as a merchant in Cairo, doing business as "[REDACTED]" since June 22, 1987.

On February 7, 2002, the director issued a request for additional evidence regarding the ownership of the foreign entity, including a list of owners, and a copy of the minutes of the meetings for the foreign company providing the list of shareholders and the number and percentages they own. The director also requested additional evidence regarding the ownership of the U.S. company including: (1) evidence to show that the foreign parent company has paid for the U.S. entity, including copies of wire transfers, cancelled checks, deposit receipts or other evidence detailing monetary amounts for the stock purchase; (2) copies of all stock certificates issued by the U.S. company; (3) the U.S. company's stock ledger showing all stock certificates issued to the present date, including total shares of stock sold, names of shareholders and purchase price; and (4) a copy of the petitioner's Notice of Transaction Pursuant to Corporations Code Section 25102(f) showing the total offering amounts for all issued stock.

In a response dated April 25, 2002, the petitioner submitted an Egyptian tax registration certificate indicating that "[REDACTED]" has been registered as "[REDACTED]" since 1991. The petitioner also submitted a Summary of Deed of Association of a Limited Partnership, dated 1993, for [REDACTED] naming [REDACTED] as managing partner, active partner, and contributor of 25 percent of the capital of the company. The deed of partnership references two limited partners who contributed 25 percent and 50 percent of the capital totaling 200,000 Egyptian pounds. The other partners are not named.

The petitioner submitted evidence that [REDACTED] owns four certificates of deposit at the Bank of America, Buena Park, California branch, valued at \$306,505.64 as of January 5, 2001. The petitioner also resubmitted its stock certificates number 1 through 3, and provided a copy of its stock transfer ledger which indicates that [REDACTED] owns 5,000 shares and contributed \$5,000, and that [REDACTED] and [REDACTED] each contributed \$2,500 for 2,500 shares of the petitioner's stock.

The director denied the petition on May 28, 2002, concluding that the petitioner had failed to establish the claimed qualifying relationship between the U.S. and foreign entities. The director stated that although the petitioner submitted stock certificates, the petitioner had failed to document the transfer of funds to pay for stock ownership. The director further stated:

The record does not show that the two companies are owned and controlled by the same parent or individual, or that the two companies are owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity. No voting proxies or other agreements have been included in the record showing that any degree of control of both entities has been formally relinquished by other shareholders in favor of one of the individuals holding shares in both companies.

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<sup>2</sup> This individual is also identified as [REDACTED] on certain company documentation from Egypt. The AAO therefore assumes that [REDACTED] and [REDACTED] are the same person.

The director acknowledged that pursuant to *Matter of Hughes*, 18 I&N Dec. (Comm. 1982), it may be possible for a minority shareholder to exercise *de facto* control over a company, but that such control had not been established in this matter.

On appeal, counsel for the petitioner asserts that the standard of proof required by the director "goes beyond the requirements of the regulations at 8 C.F.R. § 214.2(l)(3)(v)." Counsel asserts that the director focused on the "evidentiary inadequacy" of the stock certificates submitted, but seemed to ignore the remainder of the evidence submitted in support of the petitioner's claimed qualifying relationship, including the stock ledger and the minutes of the U.S. company's initial meeting. Counsel claims that the registration of the foreign company issued by Egyptian authorities "also noted the ownership of the USA company by the foreign parent entity," and that the petitioner submitted evidence of wire transfers from the claimed parent to the petitioner. Counsel contends that the director either failed to consider all of the evidence or simply failed to explain why each submitted piece of evidence was inadequate. Counsel asserts that the director "insists that stock certificates are not everything when it comes to proving ownership, yet he treats the stock certificates as everything in this case."

Counsel references *Matter of Hughes*, acknowledging "the key factor evidencing control is ownership of the majority of shares in another corporation." Counsel alleges that the adjudicator did not follow the guidance of this precedent decision and instead created a personal standard for establishing a parent-subsidiary relationship. Counsel also questions the director's reference to *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362, and the director's "rather odd request" for agreements related to the voting of shares, distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity as evidence of a parent-subsidiary relationship. Counsel states that small start-up companies like the petitioner "do not have any need for such agreements." Counsel contends that the request was wrong and unlawful, and based on a personal standard of proof rather than one based in the regulations or in precedent decisions.

Counsel's assertions are not persuasive. The petitioner has not established that the U.S. company and the foreign entity have a qualifying relationship. Preliminarily, although the director's conclusions were appropriate based on the evidence submitted, the AAO notes that when denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i).

Upon review of the director's decision, the AAO agrees with counsel that the reasons given for the denial are conclusory with few specific references to the evidence entered into the record. As the AAO's review is conducted on a *de novo* basis, the AAO will herein address the petitioner's evidence and eligibility. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 the 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 petitioner claims to be a subsidiary of the beneficiary's foreign employer [REDACTED] located in Egypt, which appears to be a sole proprietorship owned by [REDACTED]. However, the petitioner's description of the ownership of the United States and foreign companies at the time of filing did not establish that the foreign entity actually owns and controls the United States company. The petitioner asserted that [REDACTED] owns 100 percent of the foreign entity, but only 25 percent of the U.S. company. The supporting documentary evidence submitted at the time of filing, including the "Certificate of Particulars" for the foreign entity, and the U.S. company's stock certificates and minutes of its organizational meeting, confirmed this ownership structure.

Therefore, the common ownership and control between the two companies appears to be only 25 percent, which on its face, is insufficient to establish a parent-subsidary or affiliate relationship. If one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners. Here, the petitioner did not establish that one individual owns a majority interest in both companies.

The regulatory definition of subsidiary does include a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, less than half of the entity, but in fact controls the entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). Control may be *de jure* by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be *de facto* by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982).

In this case the U.S. entity is owned by three individuals, of which the claimed "parent," [REDACTED] doing business as [REDACTED], "owns only a 25 percent interest. Absent documentary evidence such as voting proxies or agreements to vote in concert so as to establish a controlling interest, the petitioner has not established that the same legal entity or individual owns and controls both companies. Although counsel objects to the director's determination that voting proxies or other agreements would be required to establish the claimed relationship, particularly for a small start-up company, the AAO notes that there is no other way to establish that [REDACTED] in fact controls the U.S. entity through her minority interest, as such control is not documented in the petitioner's by-laws or minutes of its organizational meeting. 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)).

Counsel cites no legal authority for the position that *de facto* control could be assumed by reason of ownership of 25 percent of the outstanding stocks of a corporation. Further, counsel's arguments suggest counsel's belief that the evidence presented clearly shows a parent-subsidary relationship between the two entities; counsel does not acknowledge that the claimed parent owns only a minority interest in the U.S. company. In fact, counsel states the relationship is clearly demonstrated by the petitioner's stock certificates, by laws, and minutes of its organizational meeting. Counsel also references wire transfers from the foreign entity to the U.S. entity and states that "the registration of foreign company issued by Egypt also noted the ownership of the USA company by the foreign parent entity." Upon review of the record, the AAO finds no clear evidence of wire transfers from the foreign entity to the U.S. company, nor any reference to the U.S. company in the translations of documents issued by the Egyptian company. However, even if such

documents were provided, they would be insufficient to overcome the stated ownership structure provided in the petitioner's stock certificates, stock ledger, by-laws and minutes of its organizational meeting, all of which indicate that the claimed parent owns only a minority interest in the company. Even if the U.S. and foreign companies consider themselves to be "affiliated," they have not met the regulatory requirements to establish a qualifying parent-subsidiary or affiliate relationship for the purpose of this visa classification.

Although not addressed by the director, the AAO also notes some confusion regarding the name and ownership structure of the foreign company. The "Certificate of Particulars" submitted with the initial petition suggested that [REDACTED] is the sole proprietor of the business known as [REDACTED] since 1987. The petitioner's response to the director's request for evidence included a deed of association for a limited partnership known as [REDACTED] which would be engaged in the display and sale of clothes. Based on the deed of partnership, [REDACTED] appears to own only a 25 percent interest in the partnership, but serves as its managing partner. It is not clear whether these are two separate businesses, or whether the originally established sole proprietorship was re-organized as a partnership. 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). As the petitioner failed to establish that [REDACTED] owns and controls the petitioning company, this issue need not be discussed further.

Therefore, based on the foregoing discussion, the AAO finds that the director applied the appropriate legal standard in light of the evidence submitted, and correctly found insufficient evidence to establish the requisite degree of ownership and control required to establish the claimed parent-subsidiary or affiliate relationship. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that the United States company, within one year of the approval of the petition, would support the beneficiary in an executive or managerial capacity as defined at sections 101(a)(44)(A) and (B) of the Act, as required by 8 C.F.R. § 214.2(l)(3)(v)(C). The petitioner indicated that the beneficiary would serve as the petitioner's vice president with responsibility for "making all purchases, inventory, hiring and firing of staff and making all financial decisions for the Corporation." The petitioner submitted evidence that it had already begun operating a retail clothing and accessory store. In the request for evidence issued on February 7, 2002, the director requested a detailed description of the beneficiary's proposed duties and the percentage of time he will spend on each duty, an organizational chart for the U.S. company, the company's business plan, and a list of all employees to include their names, job titles and wages.

The petitioner did not submit the requested position description for the beneficiary, the employee list, or an organizational chart for the U.S. company. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner again stated that it had already opened a store and that, in addition to the beneficiary, it expected to hire two sales persons "in the next couple of month [sic]." As evidence that the company would support a manager or executive within one year, the petitioner referenced its business plan and anticipated sales growth of 30 percent annually. The petitioner's business plan indicates that the company intends to expand its activities to exporting merchandise to Egypt, and suggested that the beneficiary's contacts in Egypt would be critical to this expansion. The business plan indicates that the company is operated by two employees, including a president who performs all administrative work, procurement and customer sales. According to the business plan, the company may

hire a third employee or eventually assign some work to part-time workers. The petitioner's projected payroll for its first full year of operations is \$30,000.

Based on the limited evidence submitted, and considering the petitioner's failure to fully respond to the director's request for evidence, it cannot be concluded that the beneficiary would be employed in a primarily managerial or executive capacity within one year. 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 brief position description submitted includes non-qualifying duties related to purchasing and inventory, and the record also suggests that the beneficiary would be responsible for non-managerial duties related to export and overseas sales activities. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has not provided a detailed hiring plan, however, based on the petitioner's statements and the brief business plan submitted, it appears that the petitioner's staff will be increased, at most, by one or two sales staff during the first year of operations. The petitioner has not explained how the managerial and executive responsibilities associated with operating a four-person retail business would be divided among the current president and the beneficiary's proposed role as vice president, or otherwise established that the company will have a reasonable need for or could support two managerial positions. The record does not establish that the beneficiary would have managerial or executive authority over the new office, or that he would be employed in a managerial or executive capacity within one year, other than in position title. For this additional reason, the petition cannot be approved.

Beyond the decision of the director, the petitioner has not established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner described the beneficiary's role as "manager" of the foreign entity as being responsible for "all purchases, inventory, hiring and firing of staff, and making all financial decisions for the company." According to a letter from the petitioner submitted in support of the petition, the beneficiary was responsible for managing a store operated by the foreign entity in Egypt. In support of the petition, the petitioner submitted a letter from the owner of the foreign entity indicating that the [REDACTED] for [REDACTED] employs a total of 35 employees including two secretaries, two accountants, one accounts secretary, four representatives, two drivers, 15 sewing machine technicians, two ironing technicians, one over worker, two finishing workers, two sorting out workers, one buttonholes machine worker and two office boys.

The director subsequently requested a copy of the foreign company's organizational chart clearly identifying the beneficiary's position and the positions filled by the beneficiary's subordinates, as well as a more detailed description for the beneficiary's overseas position, including the percentage of time the beneficiary spends in each of his duties. In response, the petitioner stated that the foreign entity has 12 employees, and that the beneficiary was responsible for "the management of the retail stores, supervision of the sales staff, training of sales staff, purchase of merchandise for the stores, decisions on what merchandise to carry and advertising." The petitioner provided payroll records for 2001 confirming 12 employees; however, the petitioner did not submit the requested organizational chart or otherwise identify the positions held by the foreign company's employees. Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In addition, the petitioner did not attempt to clarify why the

evidence submitted with the initial petition indicated that the foreign entity employs 35 workers engaged in manufacturing activities, rather than 12 workers engaged in the operation of retail stores, as claimed in its response to the director's request for evidence. 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. at 591-92.

Even if the AAO accepts that the foreign entity operates retail stores, the record does not establish the number of stores or the staffing of each store, such that it could be concluded that the beneficiary is relieved from performing non-managerial duties related to their day-to-day operations. Regardless, the beneficiary's job description suggests that he was engaged in non-managerial duties related to purchasing inventory, and first-line supervision of non-professional sales personnel. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Based on the limited and conflicting evidence in the record, the petitioner has failed to establish that the foreign entity employed the beneficiary in a primarily managerial or executive capacity. For this additional reason, the petition cannot 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).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.