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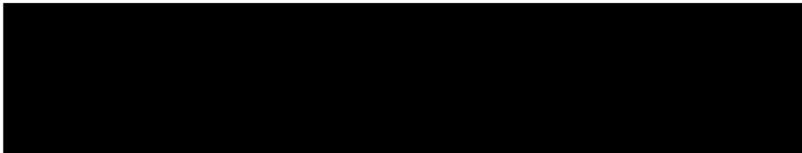
File: EAC 02 091 51211 Office: VERMONT SERVICE CENTER Date: JUN 04 2007

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)

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, Vermont 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-1B nonimmigrant intracompany transferee with specialized knowledge 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 New York corporation that claims to be engaged in public opinion survey research. The petitioner states that it is a subsidiary of Solutions Factory Ltda, located in Bogota, Colombia. The petitioner seeks to open a new office in the United States and has requested that the beneficiary be granted a thirteen-month period of stay in L-1B classification to serve as its international technical manager.<sup>1</sup>

The director denied the petition concluding that the petitioner did not establish: (1) that the United States company has secured sufficient physical premises to house the new office; (2) that the petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States; or (3) that the beneficiary had at least one year of full-time employment with a qualifying foreign entity within the three years preceding the filing of the petition. The director noted that the documentation submitted referenced two different foreign entities, and the petitioner had not adequately identified the relationship of those two companies.

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: (1) that the petitioner's Colombian parent company utilizes a trade name, which the director misinterpreted as a separate company; (2) that the petitioner submitted extensive documentation to show that the foreign company is a "large, viable business" and that the petitioner, as a consulting business, does not require a large investment; and (3) that the regulations do not require the petitioner to acquire a lease for a commercial or business property. Counsel submits a brief 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.

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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.

- (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)(3)(vi) states that if the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, 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 (l)(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 first issue addressed by the director is whether the petitioner had secured sufficient physical premises to house the new office as of the date the petition was filed, as required by 8 C.F.R. § 214.2(l)(3)(vi).

The nonimmigrant petition was filed on January 17, 2002. The petitioner stated on Form I-129 that the beneficiary would work at the following address: [REDACTED]. The petitioner did not submit evidence that the U.S. company had leased or purchased property located at this address. The petitioner submitted a business plan, which referenced a "small technified Call Center," and noted that "it's possible the necessity [sic] to extend and modernize it or sub hire a Call Center that fills up our requirements."

On March 7, 2002, the director issued a request for additional evidence. The director instructed the petitioner to submit evidence to establish that sufficient physical premises to house the new office have been acquired. The director also requested a more detailed description of the type of business to be conducted by the U.S. entity.

In a response received on May 31, 2002, the petitioner submitted a copy of a rental agreement between [REDACTED] and the petitioner for the property at [REDACTED], which was valid for a term of twelve months commencing on January 12, 2002. The agreement appears to be for a residential dwelling. The AAO notes that the lease references "Landlord's rights under Washington law," although the property is located in New York.

The director denied the petition on August 27, 2002, concluding that the petitioner failed to establish that the U.S. company had secured sufficient premises to house the new office as required by 8 C.F.R.

214.2(l)(3)(v)(A). The director observed that the submitted lease agreement appeared to be a residential property, rather than a property zoned for commercial or business activity.

On appeal, counsel for the petitioner asserts:

One of the important changes that our society has undergone in the past ten years is the transition to an information based economy. This company is not going to manufacture any product or receive customers in its office. The use of the so called "virtual office" has become very common, indeed the standard in information based business. The regulations do not require that the lease be a commercial or business property and in this case may not even be appropriate.

Counsel's assertions are not persuasive. The petitioner has not established that it has secured sufficient physical premises to house the new office. The AAO acknowledges that the regulations do not specify the type of premises to be secured by a petitioner seeking L-1 classification as a new office, and observes that there may be cases in which a home office would satisfy the regulatory requirements. However, the petitioner bears the burden of establishing that its physical premises should be considered "sufficient" as required by the regulations. To do so, it must clearly identify the nature of its business, the specific amount and type of space required to operate the business, its proposed staffing levels and evidence that the space can accommodate the petitioner's growth during the first year of operations. USCIS may also consider evidence that the company has obtained a license to operate the business from a home office, if required, evidence that the company has established separate phone lines or made other accommodations for the use of the premises by the U.S. company, or any other evidence that would establish that a residential dwelling will meet the company's needs. Finally, photographs and floor plans of the leased premises may assist in determining that the premises secured are sufficient to accommodate the petitioner's business operations.

The AAO acknowledges that the director's request for evidence was not ideal in its level of specificity; however, the petitioner has not offered any additional evidence on appeal to show that the specific premises secured are sufficient to accommodate the petitioner's business. The lease agreement submitted does not establish the type, amount or intended use of the leased premises. 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)). The only reference in the record to the type of space required is the reference to a "technified [sic] Call Center" in the petitioner's business plan. Based on the limited evidence, it is impossible to conclude that the leased space is adequate for the petitioner's purposes. Counsel's suggestion on appeal that a commercial or business property "may not even be appropriate" in this case is not supported by evidence. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Further, as noted above, the validity of the lease agreement is in question, given the reference to Washington State law in a lease that was ostensibly executed in the State of New York. 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. *Id* at 591.

The petitioner has not submitted evidence on appeal to overcome the director's determination on this issue. Accordingly, the appeal will be dismissed.

The second issue addressed by the director is whether the petitioner submitted sufficient evidence to establish that the petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States. *See* 8 C.F.R. § 214.2(l)(3)(vi)(C).

The petitioner stated on Form I-129 that it is a wholly-owned subsidiary of Solutions Factory Ltda, a Colombian company. In support of the petition, the petitioner submitted a certification from a public accountant, [REDACTED], dated August 22, 2000, which indicates that the claimed parent company "will be in charge of all of the initial operation expenses of the new United States Company." The petitioner also submitted translated copies of the foreign company's income tax return and profit and loss report for 2000, with all figures shown in Colombian currency. The petitioner provided a business plan for the proposed U.S. company which included projected "unique" expenses amounting to \$28,450, and additional monthly expenses of approximately \$1,400. The petitioner did not provide evidence that any financial investment had been made in the U.S. entity as of the date of filing.

On March 7, 2002, the director issued a request for additional evidence, in part, instructing the petitioner to submit evidence that establishes the size of the United States investment and the financial ability of the foreign organization to remunerate the beneficiary and commence doing business in the United States. As noted by the director, the petitioner did not respond to this request.

Accordingly, the director concluded in his decision dated August 27, 2002 that the petitioner had failed to establish that the petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

On appeal, counsel for the petitioner asserts that the petitioner provided extensive documentation to show that the foreign company is a "large, viable business" with the financial ability to commence doing business in the United States. Further, counsel emphasizes that the petitioner will operate a consulting business which does not require a large capital investment.

Upon review, the petitioner's assertions are not persuasive. The record as presently constituted contains no documentary evidence of any funds already provided to the U.S. entity for the purpose of establishing the subsidiary company. Although the petitioner submitted a certification from the foreign entity confirming that it will cover expenses of the U.S. company, the petitioner submitted no documentary evidence to corroborate these claims, such as any evidence of funds originating from the foreign entity deposited into the petitioner's bank account. At a minimum, the petitioner should be able to establish that it has received a capital investment sufficient to cover its stated anticipated start-up costs. 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. at 165.

The AAO also acknowledges the petitioner's submission of financial documents for the foreign entity. However, the documents provide all figures in Colombian currency, and thus the AAO cannot determine

whether the foreign entity's financial position can support the petitioner's operations during the first year of operations. Given these uncertainties, and based on the lack of any evidence of an investment from the foreign entity, the AAO must concur with the director's conclusion on this issue. Counsel's insistence that the start-up costs for a consulting company will be minimal does not exempt the petitioner from establishing that the petitioner has the financial ability to commence doing business in the United States as required by 8 C.F.R. § 214.2(l)(3)(vi)(C). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

The petitioner has not submitted evidence on appeal to overcome the director's determination on this issue. Accordingly, the appeal will be dismissed.

The third and final issue addressed by the director is whether the petitioner established that the beneficiary had at least one year of full-time employment abroad with a qualifying entity within the three years preceding the filing of the petition, as required by the regulation at 8 C.F.R. § 214.3(l)(3)(iii).

At the time of filing, the petitioner indicated on Form I-129 that the beneficiary was employed by its claimed parent company, Solutions Factory, Ltda., from March 28, 1999 until January 10, 2001. In support of this assertion, the petitioner submitted a certificate dated August 2001 from [REDACTED] who is identified as a public accountant. [REDACTED] certified that the beneficiary worked for Solutions Factory Ltda since March 28, 1999. The petitioner submitted position descriptions for the beneficiary's current and proposed positions on letterhead which identified the company name as "Opinometro," as well as payroll rosters for "Solutions Factory Ltda (Opinometro)." The petitioner's business plan indicates that Solutions Factory Ltda. "has an exclusive license contract for Colombia with [O]pinionmeter Inc., a North American Company." Finally, the petitioner submitted a stock certificate number four indicating that all one hundred of its authorized shares have been issued to Solutions Factory Ltda.

In the request for evidence dated March 7, 2002, the director stated:

Submit additional evidence to establish that there exists a qualifying relationship between Solutions Factory and Opinometro the foreign entities referred to in the submitted documents. It appears that the beneficiary was employed by Solutions Factory, however Opinometro is the Company of which [the petitioner] is a subsidiary.

The petitioner's response to the director's request did not address this request. The director denied the petition on August 27, 2002, concluding that the petitioner had not established the beneficiary's one year of full-time employment with a qualifying organization based on the petitioner's failure to clarify the relationship between Opinometro and Solutions Factory.

On appeal, counsel for the petitioner asserts that the petitioner is a wholly-owned subsidiary of Solutions Factory Ltda. Counsel acknowledges the director's request for information regarding the relationship between Solutions Factory Ltda and Opinometro, and states: "It was explained, and documentation was provided to show that 'Opinometro' is the trade name for 'Solutions Factory Ltda.' In this country we would describe the company as 'Solutions Factory Ltda d.b.a. Opinometro.'

Upon review, the AAO finds sufficient evidence to establish that the beneficiary was employed by the claimed parent company, Solutions Factory Ltda., for the requisite time period. Although there is no evidence in the record that the petitioner submitted documentation addressing this issue in response to the director's request for evidence, the AAO notes that the relationship between Solutions Factory and Opinometro is not relevant, since the petitioner has consistently indicated that Solutions Factory employed the beneficiary and that Solutions Factory owns the U.S. company. The AAO observes that the limited evidence in the record supports counsel's assertion that Opinometro is a trade name of the foreign entity. The director's findings with respect to this issue only will be withdrawn.

Beyond the decision of the director, the record does not contain sufficient documentation to persuade the AAO that the beneficiary possesses specialized knowledge or that the petitioner will employ the beneficiary in a position requiring specialized knowledge. The petitioner has neither indicated nor provided documentary evidence to establish that the beneficiary possesses specialized knowledge nor articulated any basis to the claim that the beneficiary is employed in a capacity requiring specialized knowledge. Other than submitting a general description of the beneficiary's current and proposed job duties, the petitioner has not identified any aspect of the beneficiary's position which involves special or advanced knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D) and Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). The beneficiary's proposed position appears to involve development and design of statistical samples and methodologies for market and public opinion studies, performance of mathematical and statistical analyses, preparation of reports and preparation of technical reports and proposals. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate the proposed employment from similarly employed workers in the petitioner's industry. Nor has the petitioner described its services or attempted to differentiate its services, techniques or methodologies from those of other public opinion survey research companies. 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 Soffici*, 22 I&N Dec. at 165. 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). For this additional reason, the petition cannot be approved.

Another issue not directly 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 director focused on the relationship between the petitioner's claimed parent company and Opinometro, but did not discuss whether the petitioner submitted sufficient evidence to establish the claimed parent-subsidiary relationship between the petitioner and the beneficiary's foreign employer.

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.

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.

The petitioner has submitted a copy of its stock certificate number 4, indicating that 100 shares of stock were issued to Solutions Factory Limitada on October 10, 2001. While the petitioner's articles of incorporation and the stock certificate indicate that the company is only authorized to issue 100 shares of stock, the AAO finds the stock certificate by itself insufficient to establish the claimed relationship. The petitioner has not accounted for stock certificates numbers 1, 2, and 3, provided a copy of its stock transfer ledger, or otherwise explained why its initial stock issuance was recorded on certificate number 4. Based on the limited evidence submitted, the AAO cannot conclude that the petitioner has a qualifying relationship with the foreign entity. 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.