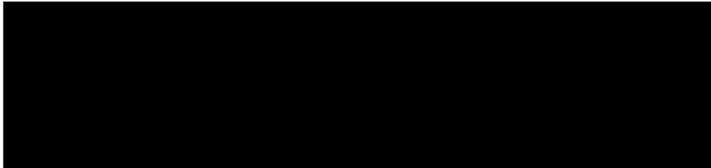




U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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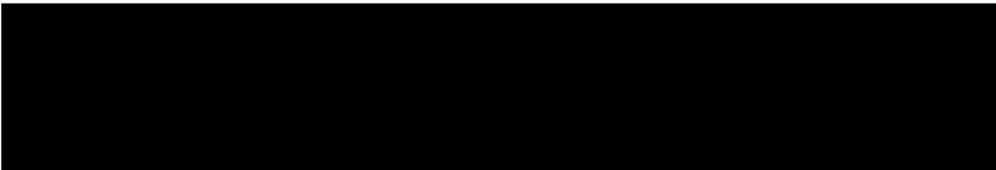
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File: SRC 06 067 51574 Office: TEXAS SERVICE CENTER Date: **JUN 27 2007**

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

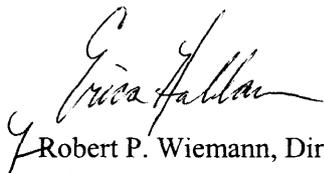
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Director
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, claims to be engaged in the import and export of medical, surgical, and laboratory supplies. The petitioner claims that it is the subsidiary of Centro de Terapia del Dolor, C.A., located in Venezuela. The petitioner seeks to employ the beneficiary as the president/general manager of its new office.

The director denied the petition, determining that the petitioner had failed to provide evidence that the intended United States operation would support an executive or managerial position within one year of the approval of the petition due to the petitioner's failure to provide evidence of 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 as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2).

Counsel for 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 contends that the director's decision was erroneous due to an incorrect interpretation of the regulations and a misunderstanding of the evidence submitted. In support of this contention, counsel submits a brief and additional evidence.

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.

- (v) 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 involved 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 (1)(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 issue in the present matter is whether the petitioner submitted sufficient evidence of 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 as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2).

With the initial petition, the petitioner claimed to be a subsidiary of the foreign company, but failed to submit evidence of the foreign entity's investment in the United States entity. Consequently, the director issued the following request on January 20, 2006: "Submit evidence of the transfer of funds from the foreign entity to the United States entity. Attach English translations to any document not written in the English language."

In a response dated March 9, 2006, the petitioner through counsel responded to the director's request. The petitioner submitted a letter signed by the president, administrator, and accountant of the foreign entity, dated January 27, 2006, claiming that they invested \$14,000 in the U.S. entity. In addition, the petitioner submitted copies of its Bank of America business checking account statements from November and December of 2005,

showing that a total of \$17,900 had been deposited in the account during those two months. The ending balance on December 30, 2005 was \$4,842.04. The nonimmigrant petition was filed on December 27, 2005.

On June 8, 2006, the director denied the petition, finding that the evidence submitted in response to the request for evidence did not establish that the foreign entity had actually invested funds into the petitioner. On appeal, counsel for the petitioner contends that the director's conclusions were erroneous, and submits copies of the foreign entity's bank statements from November 2005 as evidence of the transfer of funds.

Upon review of the evidence submitted, the AAO concurs with the director's findings. In this matter, the petitioner submits two bank statements as evidence of the foreign entity's investment in the newly-incorporated U.S. entity. The bank statements contain the following deposits:

<u>Date</u>	<u>Amount</u>	<u>Notation</u>
11/02/2005:	\$4,300.00	Deposit
11/16/2005:	\$6,000.00	Deposit
11/30/2005:	\$3,600.00	Deposit
12/07/2007:	\$4,000.00	Counter Credit

The AAO notes that the total amount deposited in this account during the period from November 2, 2005 through December 30, 2005 was \$17,900.00.

The petitioner and counsel urge the AAO to accept the above-referenced evidence, in addition to a letter signed by three agents of the foreign entity, as evidence of the foreign entity's investment in the U.S. entity and its ability to remunerate the beneficiary and commence business operations in the United States. The petitioner overlooks the fact that there is no reference to the source of these funds, nor is there any notation of copy of checks or money orders evidencing the transfer of funds from the foreign entity to the petitioner. Furthermore, the letter from the foreign entity, dated January 27, 2006, claims it invested \$14,000, yet the petitioner claims only \$13,900 was deposited. Additionally, the petitioner also claims that the \$4,000 deposited on December 7, 2005 was also transferred from the foreign entity; however, the foreign entity makes no reference to this additional investment in its January 27, 2006 letter. 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).

On appeal, the petitioner attempts to corroborate its claim that the monies deposited into the Bank of America account originated with the foreign entity, by submitting a copy of the foreign entity's bank statement from November 2005. The petitioner, however, was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Furthermore, even if this documentation had been submitted in response to the request for evidence,

the documentation is not translated. Because the petitioner failed to submit certified translations of the documents, the AAO would not be able to determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence was not probative and would not have been accorded any weight in this proceeding.

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)). Despite the petitioner's claims that the bank statements represent deposits from the foreign entity, there is no independent evidence to corroborate the claim, such as evidence of cancelled checks issued to the petitioner by the foreign entity, receipts for the purchase of traveler's checks, or other such documentation. In addition, 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).

Another inconsistency not discussed by the director is the validity of the petitioner's business plan. On page two of the business plan, the petitioner submits a table entitled "Start-up." This table indicates that the total of start-up expenses, including rent, research and development, and management salaries, amounts to \$75,000.00. The amount of cash required is listed as \$50,000.00, thereby indicating that a total of \$125,000.00 in funding is required for the successful start-up phase of the petitioner. However, this table, and the business plan itself, is not discussed by the foreign entity nor is any evidence submitted of a long-term agreement through which this amount will be transferred to the petitioner. In fact, the lack of such evidence addressing the petitioner's start-up costs creates further questions not addressed by the director in his decision. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Finally, even if the petitioner had adequately documented the alleged investment from the foreign entity, \$14,000 would fall significantly short of meeting the petitioner's anticipated costs.

The record, therefore, lacks documentary evidence to support the petitioner's claim that the foreign entity transferred \$14,000 to the petitioner in November and December of 2005. This lack of documentation, coupled with the petitioner's failure to acknowledge its business plan and claimed start-up funding requirements, leads the AAO to seriously question whether any funds were or ever will be transferred from the foreign entity to the petitioner. 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). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. See e.g. *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).

The petitioner has failed to provide evidence of the U.S. investment or evidence that the foreign entity has the ability to remunerate the beneficiary. It is clear that the petitioner requires a minimum of \$125,000 in funding to commence operations, but no evidence that the foreign entity has agreed to provide, or is able to provide, such funding is submitted. As a result, the AAO finds that the record does not support a finding that the

petitioner will be able to support the beneficiary in a primarily managerial or executive position within one year of the petition's approval. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has failed to submit evidence that a qualifying relationship exists between the petitioner and the foreign entity as required by C.F.R. § 214.2(l)(3)(i). 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 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.

In this matter, the petitioner merely submits copies of stock certificates, indicating that the foreign entity owns 60% and that the beneficiary owns 40% of the petitioner. While a copy of the Minutes of Special Shareholders' Meeting is submitted, this document is neither dated nor properly executed. Finally, page 1 of the petitioner's business plan, under heading 1.1 entitled "Company Ownership," states that the foreign entity owns 100% of the U.S. petitioner. This statement directly contradicts the stock certificate and meeting minutes which claim the foreign entity only owns 60% of the petitioner. 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). For this additional reason, the petition may not be approved.

Furthermore, the record contains insufficient evidence to establish that the overseas company employed the beneficiary in a primarily managerial or executive capacity as required by 8 C.F.R. § 214.2(l)(3)(v)(B). The only information provided by the petitioner was the beneficiary's job title while employed abroad, which was that of "general administrator." No additional discussion or details regarding her position were submitted. 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)).

Since the record contains virtually no discussion of the beneficiary's foreign employment, the AAO is unable to determine whether she was employed abroad in a qualifying capacity prior to her employment in the United States. For this reason, the petition can 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.

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.