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U.S. Citizenship  
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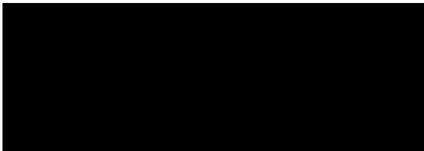
FILE: WAC 07 162 52249 Office: CALIFORNIA SERVICE CENTER Date: **NOV 01 2007**

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, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the case will be remanded for further consideration and action.

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as its "plant manager" 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 limited liability company organized under the laws of the State of Utah which describes its business as "mining industry commercial equipment and maintenance."

The director denied the petition concluding that the petitioner failed to establish that the petitioner and the foreign employer are qualifying organizations. Specifically, the director determined that, because the petitioner's articles of organization failed to identify the members of the limited liability company, the petitioner failed to establish that the petitioner is a qualifying organization.

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 to the petitioner asserts that, because it is not customary to list ownership interests in a limited liability company's articles of organization, the petitioner's submission of its operating agreement and other relevant documents which list ownership interests sufficiently establishes the petitioner's ownership and control. Furthermore, counsel submitted evidence that it has amended its articles of organization to reflect the membership interests already set forth in the limited liability company's operating agreement.

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 has established that it and the foreign employer are qualifying organizations.

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States 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). An "affiliate" is defined in part as "[o]ne of two legal entities owned and controlled by the same group of individuals." 8 C.F.R. § 214.2(l)(1)(ii)(L)(2). The petitioner must also establish that both it and the foreign entity are or will be "doing business." 8 C.F.R. § 214.2(l)(1)(ii)(G)(2).

In this matter, the petitioner asserts that both it and the foreign employer are 80% owned by Leopoldo Bailac. In support of this assertion, the petitioner submits its articles of organization, its operating agreement, and financial documents pertaining to the petitioning organization. While the articles of organization do not identify the members or their purported ownership interests in the petitioner, this information does appear in the operating agreement. Likewise, the foreign employer's owners are listed in the financial data.

Nevertheless, on May 17, 2007, the director requested additional evidence. The director requested a list of owners of the United States operation and a copy of the petitioner's articles of organization, which includes the names of members and their respective percentages of ownership.

In response, counsel explains in a letter dated May 18, 2007 that articles of organization for Utah limited liability companies need not contain specific membership information. Counsel also submits a sworn statement from the petitioner's registered agent and corporate attorney addressing the petitioner's ownership and indicates that the petitioner's membership information is listed in the previously submitted operating agreement.

On May 29, 2007, the director denied the petition concluding that the petitioner failed to establish that the petitioner and the foreign employer are qualifying organizations. Specifically, the director determined that, because the petitioner's articles of organization fail to identify the members of the limited liability company, the petitioner failed to establish that the petitioner is a qualifying organization.

On appeal, counsel to the petitioner asserts that, because it is not customary to list ownership interests in a limited liability company's articles of organization, the petitioner's submission of its operating agreement and other relevant documents which list ownership interests sufficiently establishes the petitioner's ownership and control. Furthermore, counsel submits evidence that it has amended its articles of organization to reflect the membership interests set forth in the limited liability company's operating agreement.

Upon review, the AAO agrees with counsel's assertions and the director's decision shall be withdrawn. Utah law does not require that a limited liability company's articles of organization list an entity's initial members if the articles indicate that it will be managed by a manager. See Utah Code Ann. § 48-2c-403(2) (2007). In this matter, the articles of organization state that the petitioner will be managed by a manager. Therefore, the petitioner was not obligated to identify its members in the articles of organization. Instead, the petitioner submitted its operating agreement, which indicates that the petitioner is 80% owned by Leopoldo Bailac. In this particular instance, the director should have considered this operating agreement instead of requiring that the petitioner's articles of organization contain a list of members.

Accordingly, the petitioner has established that it and the foreign employer are principally owned and controlled by the same individual, and the director's decision shall be withdrawn.

However, upon review, the petitioner has not submitted sufficient evidence to establish eligibility for the requested L-1A classification and, as such, the appeal cannot be sustained.

While not addressed by the director, the petitioner provided insufficient evidence to establish that the beneficiary will be employed in the United States in a managerial or executive capacity. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). In this matter, the petitioner asserts that the beneficiary will "supervise two subordinate service managers who are engineers by training, and these managers will in turn manage the work of fifteen skilled workers who actually repair and retread the tires." However, the petitioner does not specifically describe the duties of the subordinate supervisors. Also, the petitioner asserts in the Form I-129 that it currently employs only two people. The record does not resolve this inconsistency. 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).

Also, the record as a whole indicates that the beneficiary will be controlled by the petitioner's mining client, rather than by the petitioning organization, and, thus, the record indicates that the beneficiary will be, for all practical purposes, employed by the client, which does not appear to be a qualifying organization.

Finally, it appears that the petitioner currently employs another person who is classified as an L-1A intracompany transferee (WAC 07 163 52969). The record as currently constituted does not establish that the petitioner has the organizational complexity requiring or capable of supporting the employment of two managers or executives.

Therefore, the director is directed to review the record, request pertinent additional evidence, and render a new decision after reviewing this evidence.

Furthermore, the petitioner has not submitted sufficient evidence to establish that it and the foreign employer are currently engaged in doing business. While the petitioner has alleged that it is in the business of supporting mining operations in Tooele, Utah, the specifics of this business arrangement were not disclosed.

Therefore, the director is directed to review the record, request pertinent additional evidence, and render a new decision after reviewing this evidence.

For these additional reasons, the appeal may not be sustained, and the matter must be remanded to the director for further action.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to the director for further action consistent with the above and entry of a new decision which, if adverse, shall be certified to the AAO for review.