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File: LIN 06 060 50499

Office: NEBRASKA SERVICE CENTER

Date: JUL 03 2008

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:

SELF-REPRESENTED

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, Nebraska 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 Montana that operates a hotel, seeks to employ the beneficiary as its chief financial officer. The petitioner claims to maintain an affiliation with Ralston House Properties, Ltd. located in Vancouver, British Columbia, Canada.

The director denied the petition concluding that the petitioner did not establish that it maintained a qualifying relationship with a foreign 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, the petitioner asserts that the petitioner did in fact establish its eligibility for the classification sought, and submits additional evidence to support this contention.

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 issue in this 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.
- (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.

The nonimmigrant petition was filed on January 10, 2006. On the L Classification Supplement to Form I-129, the petitioner claimed that the foreign entity with which it maintained a qualifying relationship was Ralston House Properties, located in Vancouver, British Columbia, Canada.¹ Minimal and somewhat confusing information with regard to the ownership of the petitioner and the claimed foreign entity was provided. Where instructed at Part 10 of the L Classification Supplement to describe the stock ownership and control of each company, the petitioner simply listed its name and U.S. tax identification number. The petitioner also listed "Ralston House Properties, Inc. (not Ltd.) and a U.S. tax number for this company. The petitioner failed to specifically state the owner(s) of the U.S. petitioner in this matter as requested.

Moreover, the record contained a Form 1120-F, U.S. Income Tax Return of a Foreign Corporation for the year 2004 for Ralston House Properties Ltd. The form indicated that (1) the company maintained an office in the United States; and (2) the U.S. petitioner was the company's agent in the United States. In addition, the record contained a letter dated November 15, 2005 by [REDACTED] i. In this letter, Ms. [REDACTED] indicated that she and her husband, who was recently deceased, owned and operated the U.S. petitioner for 35 years. She further indicated that this was a family business, and that the beneficiary was now the sole shareholder of Ralston House Properties, Inc. in the United States and two other companies, Oaxaca Management Ltd. and Can Lanka Enterprises, Ltd. which were not previously discussed or identified. Finally, Form 1120-F indicates that Ralston House Properties, Ltd. is actually incorporated in the United States.

In the request for evidence dated January 24, 2006, the director requested definitive documentation to establish the ownership of the U.S. and foreign entities and to demonstrate the nature of the relationship between the two companies. The director specifically requested documentation to support the petitioner's claim that the two companies maintained an affiliate relationship as claimed on Form I-129.

In a response dated March 4, 2006, the petitioner submitted an abundance of documents to address the director's questions. The response contained a share certificate dated December 1, 2005, indicating that Ralston House Properties, Inc., owned 280 shares of the U.S. petitioner. It is noted that the certificate number is 92. In addition, a document dated January 8, 2006 was submitted which stated as follows:

A director's meeting of [the petitioner] was held on the 30th of December 2005 at 10 a.m. Winnifred Storli and Grimm Storli were present. It was decided by unanimous consent that

¹ The petitioner's actual entry states that the employer abroad is "[The beneficiary] and/or Ralston House Properties, Ltd." The identification of the beneficiary as the foreign employer will be discussed later in this decision.

Ralston House, *Inc.* was to be given 280 shares and 280 shares. Ann vantwest was to get five. Winnifred Storli gave them these shares.

Finally, the petitioner submitted a Power of Attorney dated February 22, 2006, in which Winnifred Storli appointed the beneficiary as her attorney-in-fact and agent.

The director subsequently denied the petition, finding that the evidence submitted identified neither the actual ownership of the U.S. and foreign entities nor the nature of the relationship between them. The director noted that despite making reference to the manner in which the petitioner's shares were distributed, there was no indication in the record regarding the number of outstanding shares in the company.

On appeal, the petitioner introduces new evidence pertaining to the outstanding shares and the corporate status of the petitioner. Specifically, the petitioner indicates that it elected S corporation status, and claims that the corporation was authorized to issue 30,000 shares. It further indicates that out of the 30,000 shares authorized, 15,000 were issued as of May 31, 2001. Furthermore, the petitioner claims that as of the date of the filing of the petition, Winnifred Storli and Ralston House Properties (which it refers to as the beneficiary) owned 99% of the U.S. petitioner's shares.

The AAO, upon review, agrees with the director's ultimate conclusion, but notes numerous other discrepancies in the record. The key issue to be resolved on appeal is whether one of the above-named qualifying relationships exists between the U.S. petitioner and the foreign entity which allegedly employed the beneficiary in Canada.

The evidence submitted is incomplete, inconclusive, and confusing. On the L Supplement to Form I-129, the petitioner claimed that it maintained an affiliate relationship with Ralston House Properties, *Ltd.*, an alleged Canadian corporation. The record reflects, however, that this entity is actually incorporated in the State of Montana. Nevertheless, the record grows more confusing in that the petitioner consistently interchanges Ralston House Properties, *Ltd.* and Ralston House Properties, *Inc.*, yet never distinguishes whether these are in fact two separate entities as the names would suggest. Regardless, the record contains no documentary evidence to show that an affiliation exists between these two entities as defined above. As discussed above, affiliate means one of two subsidiaries, both of which are owned and controlled by the same parent or individual; or 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. *See* 8 C.F.R. 214.2(l)(1)(ii)(L).

Despite specific requests by the director, the petitioner failed to provide substantial and persuasive evidence to clearly establish the ownership of both companies, such that the proper analysis could be performed. 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 support of the claimed relationship, a stock certificate indicating that Ralston House Properties, *Inc.* owned 280 shares of the petitioner, and a statement stating that Grimm Storli and Ann Van Twest also owned shares in the petitioner (280 and 5, respectively), were submitted. Upon review, it is clear that this ownership structure does not fit either of the statutory definitions of affiliate as discussed above.

Moreover, it does not appear that the petitioner maintains a parent-subsidary relationship with a foreign entity. It is noted that on appeal, the petitioner indicates that it is an S corporation. Prior to appeal, however, it claimed that Ralston House Properties, Inc. was a shareholder, and this was the only claimed owner of the petitioner prior to adjudication. To qualify as a subchapter S corporation, a corporation's shareholders must be individuals, estates, certain trusts, or certain tax-exempt organizations, and the corporation may not have any foreign corporate shareholders. *See Internal Revenue Code, § 1361(b)(1999)*. A corporation is not eligible to elect S corporation status if a *foreign corporation* owns it in any part. Accordingly, since the petitioner would not be eligible to elect S-corporation status with a foreign parent corporation, it appears that the U.S. entity is owned by one or more individuals residing within the United States rather than by a foreign entity. It is interesting to note that on appeal, the petitioner submits evidence that Ralston's share certificate and thus claimed ownership of 280 shares was cancelled.

Nevertheless, the petitioner has still fallen short of meeting its burden of proof in these proceedings. On appeal, the petitioner now claims that it has authorized 30,000 shares and that 15,000 are outstanding. However, it has still failed to establish that a majority of these 15,000 shares are owned by the foreign entity that allegedly employed the intended beneficiary, or that the same person owns and controls both the petitioner and the foreign entity that allegedly employed the intended beneficiary.

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.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws,

minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

For the first time on appeal, the petitioner addresses the director's questions pertaining to the number of outstanding shares of the petitioner, and submits copies of relevant corporate documents such as the ledger and articles of incorporation, albeit for the alleged foreign entity and not the petitioner itself. Nevertheless, the petitioner was put on notice of a deficiency in the evidence and had been given an opportunity to respond to that deficiency. Therefore, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

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)). Moreover, the AAO is still uncertain as to the nature of the relationship between the U.S. petitioner and all companies mentioned, specifically since some evidence suggests that the intended beneficiary owns and operates all of these entities. The abundance of inconsistencies and contradictory evidence has rendered it virtually impossible to determine that a qualifying relationship exists and whether there is, in fact, a foreign entity which employed the beneficiary abroad. 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). Absent documentary evidence that the petitioner and foreign entity can be considered affiliates, or that they maintain a parent-subsidiary relationship, the petition cannot be approved. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, there are numerous other grounds upon which the petition must be denied. In addition to the petitioner's failure to demonstrate that a qualifying relationship exists between the petitioner and the alleged foreign entity, there also appears to be a question of whether a foreign employer in fact exists. As stated above, the alleged affiliate, Ralston House Properties, *Ltd.*, was interchangeably referred to as Ralston House Properties, *Inc.*, and sufficient documentary evidence exists to show that this company is in fact a U.S. corporation. It is unclear whether a separate incorporated entity exists, or whether there is a foreign-based office of this U.S. company. There is insufficient documentation to establish that the foreign company or foreign office is actively engaged in the regular, systematic, and continuous provision of goods or services as an employer in the United States or in a foreign country. Therefore, it cannot be concluded that the petitioner has established that the alleged foreign parent company is a qualifying organization as required by the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). In addition, since no separate documentation pertaining to the alleged office in Vancouver has been submitted, it does not appear that there is a foreign entity to which the beneficiary would presumably return upon completion of his temporary employment in the United States. Due to this documentary deficiency, the petition may not be approved.

Another issue in this proceeding, also not raised by the director, is whether the employment offered to the beneficiary is temporary. Generally, the petitioner for an L-1 nonimmigrant classification need submit only a simple statement of facts and a listing of dates to demonstrate the intent to employ the beneficiary in the United States temporarily. However, where the beneficiary is claimed to be the owner or a major stockholder of the petitioning company, a greater degree of proof is required. *Matter of Isovich*, 18 I&N Dec. 361 (Comm. 1982); see also 8 C.F.R. § 214.2(l)(3)(vii). The record indicates that the beneficiary is the sole owner of the alleged foreign organization petitioning organization, and acts as agent and attorney-in-fact for a majority shareholder of the petitioning entity. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that he will be transferred to an assignment abroad upon completion of his services in the United States. For this additional reason, the petition may not be approved.

Finally, the petitioner has not submitted any evidence to establish that the overseas company employed the beneficiary in a primarily managerial capacity, or that the beneficiary would be employed in the United States in a managerial or executive capacity as defined at section 101(a)(44) of the Act. As the appeal will be dismissed, these issues need not be examined further.

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.