

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D7



FILE: EAC 07 105 51215 Office: VERMONT SERVICE CENTER Date: JUL 07 2008

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

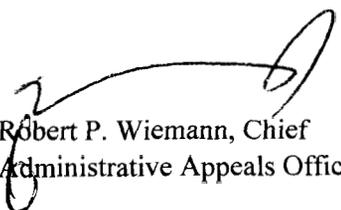
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

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, 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 summarily 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, a Virginia corporation, states that it is engaged in information technology consulting and software engineering. The petitioner states that it has a qualifying relationship with [REDACTED], located in India. The petitioner seeks to employ the beneficiary in the position of Computer Software Engineer, Applications for a three-year period.

The director denied the petition, concluding that the petitioner failed to establish that there is a qualifying relationship between the U.S. company and the beneficiary's foreign employer. The director observed that the sole shareholder of the U.S. company, an individual, owns only a minority interest in the foreign entity, and that the petitioner had failed to establish that this individual exercises control over 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, the petitioner acknowledges that the "previous distribution of stock did not satisfy the requirements of affiliated companies." Counsel asserts that the owner of the U.S. company, as of the date of the appeal, owns a 54.53 percent majority interest in the foreign entity, and thus formally controls both companies. The petitioner submits a short statement and documentary evidence in support of the appeal. The newly submitted evidence shows that Ms. [REDACTED], the sole shareholder of the petitioning company, now owns 6,004 of the foreign entity's 11,010 issued shares.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The evidence submitted on appeal regarding the foreign entity's current ownership and control has no bearing on a determination as to the petitioner's and beneficiary's eligibility as of the date this petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

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).

To establish eligibility in this case, it must be shown that the foreign employer and the petitioning entity share common ownership and control. 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, at the time of filing, the U.S. entity was owned by one shareholder, [REDACTED]. The foreign entity was owned by [REDACTED] who owned 6,004 shares; [REDACTED], who owned 5,004 shares; and, two other individuals who each owned one share. In a request for evidence issued on March 14, 2007, the director advised the petitioner that it had not presented evidence that [REDACTED] has a controlling interest in the foreign entity, and that without such evidence, it could not be determined that the two companies have a qualifying relationship. In response to the director's request, the petitioner submitted a letter dated March 20, 2007 from [REDACTED], who stated that he owns 54.53% of the stock of the foreign entity, but that his spouse, [REDACTED] "is 100% in charge of all operations and has full authority to hire and terminate employees, and take all operational decisions."

The director correctly concluded that [REDACTED]'s claimed control of the foreign company appeared to be solely on an informal basis. Managing the operations of the business is not equivalent to exercising a majority voting interest in the affairs of the company as the controlling shareholder. Absent official corporate documents or agreements showing otherwise, [REDACTED], as the majority shareholder of the foreign entity, retained *de jure* control of the company.

Based on the evidence submitted, the director correctly concluded that the petitioner did not establish that a qualifying relationship existed between the U.S. and foreign entities, and the petitioner does not dispute this finding on appeal. As noted above, the petitioner acknowledges on appeal that "the previous distribution of stock did not satisfy the requirements of affiliated companies."

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

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. .

ORDER: The appeal is summarily dismissed.