

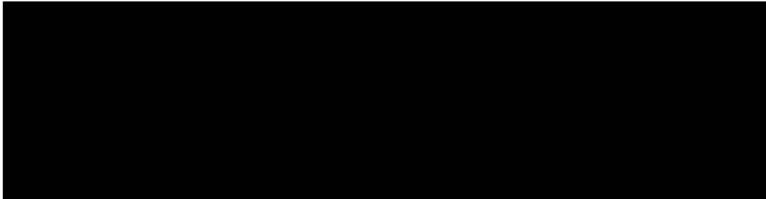
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



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U.S. Citizenship
and Immigration
Services



D7

File: WAC 08 231 51641 Office: CALIFORNIA SERVICE CENTER Date:

JUL 17 2009

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.

John F. Grissom
Acting 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 AAO will sustain the appeal.

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 Delaware limited liability company, intends to engage in the manufacture and sale of satellites. The petitioner claims to be a subsidiary of Surrey Satellite Technology, Limited, located in Surrey, United Kingdom. The petitioner seeks to employ the beneficiary as its chief executive officer of its new office in the United States for a period of one year.

The director denied the petition on two independent grounds, concluding that the petitioner failed to establish: (1) that the beneficiary had at least one continuous year of full-time employment with the foreign entity within the three years preceding the filing of the petition; and (2) that the U.S. company and the foreign entity have a qualifying relationship.

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 that the director's decision reveals a "blatant disregard" for the evidence submitted. Counsel asserts that all requirements for approval of the L-1A classification petition have been met.

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 regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that 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 (l)(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 first issue addressed by the director is whether the petitioner established that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 25, 2008. The petitioner stated on the L Classification to Form I-129 that the beneficiary was employed by its foreign parent company from October 1, 1996 until August 31, 2006, without interruption, and from "11/05/1997" to the present.¹ In a letter dated August 19, 2008, the foreign entity's Director of Finance confirmed that the beneficiary was hired as the company's Commercial Director in November 2007, and previously held the positions of Projects Director (2005-2006), Senior Program Engineer Manager (2003-2005), Program Manager (2000-2003), Senior Engineer/Project Manager (1998-2000) and Engineer (1996-1998). The beneficiary was employed with an unrelated company from 2006 until 2007.

¹ The AAO notes that upon review of the totality of the evidence, the "11/05/1997" date appears to have been a typographical error. The record shows that the beneficiary was most recently hired by the foreign entity in November 2007, rather than in November 1997.

The initial evidence also included the beneficiary's resume, which provided position descriptions and dates of employment for each position he has held with the foreign entity since 1992.

The director issued a request for additional evidence (RFE) on September 2, 2008, in which she requested copies of the foreign company's payroll records pertaining to the beneficiary for the year preceding the filing of the petition.

In response to the RFE, the foreign entity's Director of Finance stated that the beneficiary was recruited for his current position in November 2007, "having previously worked for [the foreign entity] during his university studies and formally, in various roles, between 1 October 1996 and 31 August 2006." The petitioner submitted a statement summarizing the beneficiary's employment history with the company and provided payroll records dating back to November 2007.

The director denied the petition on October 22, 2008, concluding that the petitioner failed to establish that the beneficiary was employed by the foreign entity on a continuous full-time basis for at least one year during the three years preceding the filing of the instant petition. In denying the petition, the director determined that the beneficiary had been employed with the foreign entity for a period of only ten months within the three years prior to the date of filing the petition.

On appeal, counsel for the petitioner asserts that the director failed to consider the full three-year period preceding the filing of the petition in determining whether the beneficiary had been employed by the foreign entity for the requisite one-year period. Counsel emphasizes that the beneficiary was in fact continuously employed by the foreign entity for one year within the applicable time period, between August 2005 and August 2006, and notes that the petitioner clearly provided information regarding the beneficiary's prior employment with the company.

In support of the appeal, the petitioner submits copies of the beneficiary's pay stubs for the period August 2005 through August 2006.

Upon review, counsel's assertions are persuasive. The petitioner has established that the beneficiary was employed by the foreign entity on a full-time basis for one continuous year within the three years preceding the filing of the petition. The director appears to have overlooked or erroneously disregarded the petitioner's statements that the beneficiary was employed by the foreign entity on a continuous basis from the 1990s until August 31, 2006. The evidence submitted on appeal further corroborates the beneficiary's employment history with the foreign entity. Accordingly, the director's determination with respect to this issue will be withdrawn.

The second and final issue addressed by the director is whether the petitioner established that the U.S. company and the foreign entity have a qualifying relationship. 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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term “qualifying organization” and related terms as follows:

(G) *Qualifying organization* means 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[.]

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

* * *

(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.

The petitioner indicated on Form I-129 that it is a wholly-owned subsidiary of Surrey Satellite Technology Limited, located in Surrey, United Kingdom. In support of the petition, the petitioner provided:

- A certificate from the Registrar of Companies for England and Wales confirming the active corporate status of the foreign entity as of January 30, 2008;
- The foreign company's Articles of Association as adopted by Special Resolution on January 10, 2005;
- The U.S. company's Limited Liability Company Agreement which identifies Surrey Satellite Technology Holdings, Inc., a Delaware corporation, as the petitioner's sole member;
- The petitioner's Certificate of Formation filed with the Delaware Secretary of State on February 21, 2008;

- A chart outlining the group organizational structure of the petitioner's group structure, which indicates that the petitioner is indirectly owned by Surrey Satellite Technology Limited through a United Kingdom holding company, Surrey Satellite Investments Limited, which in turn owns Surrey Satellite Technology Holdings, Inc., the petitioner's direct parent company;
- A press release issued by Surrey Satellite Technology Ltd. on August 5, 2008, announcing the establishment of the petitioning company as its U.S. subsidiary.

In the RFE issued on September 2, 2008, the director requested evidence to show that the foreign parent company has paid for its ownership interest in the U.S. company, in the form of original wire transfers, canceled checks, deposit receipts, etc.

In a letter dated October 3, 2008, the foreign entity indicated that the petitioner and its U.S. affiliate have been funded in cash by Surrey Satellite Technology Ltd., and that it is the foreign entity's intention to provide over \$1 million within six months. The petitioner submitted a feasibility study conducted by the foreign entity in connection with the establishment of the U.S. office.

In addition, the petitioner submitted:

- The minutes of three board of director's meetings held on December 7, 2007, February 1, 2008 and February 29, 2008, which discuss the establishment of the petitioner, a second U.S. limited liability company, and the U.K. holding company Surrey Satellite Investments, Ltd.
- Evidence that funds totaling \$50,000 were transferred from Surrey Satellite Technology Ltd. to the petitioning company in February 2008.
- A Subscription Agreement for Surrey Satellite Technology Holdings, Inc. in which Surrey Satellite Investments, Ltd. subscribes to 10 shares of the Delaware corporation's stock.

The director denied the petition, concluding that the petitioner failed to establish that there is a qualifying relationship between the petitioner and the foreign entity. In denying the petition, the director emphasized that the petitioner did not submit its corporate stock certificate ledger, stock certificate registry, corporate bylaws or the minutes of relevant annual shareholder meetings or other evidence formalizing the foreign entity's stock purchase.

On appeal, counsel for the petitioner asserts that the evidence is sufficient to substantiate the parent-subsidiary relationship between the foreign and U.S. companies. Counsel emphasizes that the director seemed to ignore the evidence submitted and instead focused on the petitioner's failure to provide evidence that was never requested. Counsel asserts that all of the evidence submitted indicates that the U.S. company is a wholly-owned, indirect subsidiary of the beneficiary's foreign employer.

In support of the appeal, the petitioner submits an affidavit from the foreign entity's director of finance and member of the board of directors, [REDACTED], who confirms that the petitioner is a wholly-owned indirect subsidiary of Surrey Satellite Technology Limited.

Upon review, counsel's assertions are persuasive. The evidence of record, considered as a whole, is sufficient to establish by a preponderance of the evidence that the petitioning company is an indirect, wholly-owned subsidiary of the foreign entity. The petitioner's failure to submit specific evidence that was never requested by the director cannot be used to discredit a petitioner's otherwise consistent claim. The director appears to have improperly given no evidentiary weight to the petitioner's statements or to the substantial documentation submitted to establish the parent-subsiidiary relationship. Accordingly, the director's decision will be withdrawn, and the petition will be approved.

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, the petitioner has met that burden. Accordingly, the appeal will be sustained and the decision of the director will be withdrawn.

ORDER: The appeal is sustained. The petition is approved.