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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: DEC 21 2011

OFFICE: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

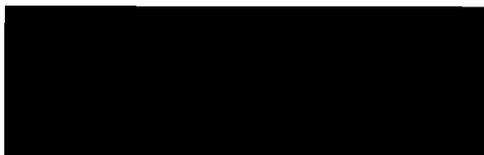
Petitioner:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 appeal will be sustained.

The petitioner claims to be engaged in the consultancy of lottery businesses. The petitioner states that it is a wholly-owned subsidiary of Camelot Global Services Limited ("Camelot UK"), located in the United Kingdom. The foreign entity petitioned United States Citizenship and Immigration Services (USCIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) 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 seeks to employ the beneficiary as Program Manager, U.S. Operations for a period of one year to open a new office in the United States.

The director denied the petition on November 1, 2009, concluding that the record contains insufficient evidence to demonstrate that a qualifying organization exists between the United States entity and the foreign entity. The director noted that the petitioner submitted a receipt for payment of the petitioner's stock over a year after the petitioner was formed in the United States. The petitioner submitted an appeal on November 18, 2009.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further 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.

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(v) states 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.

If a petition indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval. At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to commence business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). If approved, the beneficiary is granted a one-year period of stay to open the "new office." 8 C.F.R. § 214.2(l)(7)(i)(A)(3).

The issue in this proceeding is whether a qualifying relationship exists between the foreign company and the United States entity. 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 is 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 director stated in the decision that counsel submitted a copy of a wire receipt for a transfer of \$150,100.00 from the claimed parent company to the petitioner, dated August 19, 2009. The director

questioned the validity of the claimed parent company's purchase of the petitioner's stock, since the payment for the stock purchase was made over a year after the U.S. corporation was formed.

On appeal, counsel for the petitioner explains that the foreign company established the petitioner as a wholly owned subsidiary in October 2008. Counsel contends that the foreign company purchased the petitioner's stock prior to filing the instant petition. Counsel also states the following:

The Petitioner provided all corporate evidence in existence to ensure the Service that it is 100% owned and controlled by [the foreign company]. All of the best evidence has been provided. [The foreign company] does not have a \$100 receipt for the stock purchased that was executed on October 7, 2008. [The foreign company] is unsure whether the payment was made on October 7, 2008; this result from mere lack of oversight, not any sort of issue related to the truth and facts asserted by the Petitioner and its parent, [the foreign company]. This one piece of evidence lacking, alone, should not be a reason to disqualify the qualifying organization from the L-1 program, given every alternative effort has been made to prove ownership and control by [the foreign company].

As general evidence of a petitioner's claimed qualifying relationship, the petitioner's stock certificates, 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 number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control.

The petitioner submitted the certificate of incorporation for the petitioner, issued by the State of Delaware; the petitioner's by-laws, a copy of the Written Consent of Directors in Lieu of a First Meeting by the Board of Directors of [the petitioner]; a copy (front and back) of the petitioner's stock certificate that states the foreign company is the owner of 100,000 shares of capital stock of the petitioner; a copy of the Stock Purchase Agreement between the foreign company and the petitioner; receipts of a wire transfer of \$150,100.00 from the foreign company to the petitioner for \$150,000.00 in initial capitalization, plus \$100.00 for the stock purchase price; and, a copy of the minutes of a meeting of the Board of Directors of the foreign company, dated September 24, 2008, containing the discussions to form the U.S. subsidiary.

The Written Consent of Directors in Lieu of a First Meeting by the Board of Directors of the [petitioner], dated October 7, 2008, states that [the petitioner] "be and hereby is authorized to enter into and perform its obligations under a Stock Purchase Agreement be and between [the petitioner] and [the foreign company]." The document also states that the petitioner "may issue and sell 100,000 shares of Common Stock to [the foreign company] in consideration of \$100.00 (or \$.001 per share), on the terms and conditions set forth in said Stock Purchase Agreement."

The petitioner also submitted a copy of the "Stock Purchase Agreement," entered into on October 7, 2008 between the petitioner and the foreign company. The stock agreement states that the petitioner will sell to the foreign company 100,000 shares for \$100.00.

The evidence submitted is sufficient to establish that a qualifying relationship exists between the foreign company and the United States entity. The AAO will withdraw the director's decision and sustain the appeal.

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 been met.

ORDER: The appeal is sustained.