



U.S. Citizenship
and Immigration
Services

87

[REDACTED]

DATE: **OCT 18 2012** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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)

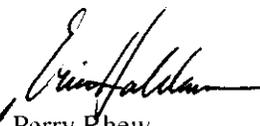
ON BEHALF OF PETITIONER:
[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 petitioner has appealed the denial of a nonimmigrant petition seeking to classify 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 Director, California Service Center, denied the visa petition on May 17, 2011, concluding that the petitioner failed to establish that it has a qualifying relationship with its claimed parent company, [REDACTED]. On June 20, 2011, the petitioner filed an appeal on Form I-290B, Notice of Appeal or Motion. The Administrative Appeals Office (AAO) will dismiss the appeal.

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 evidentiary requirements for this classification are set forth at 8 C.F.R. § 214.2(l)(3).

The petitioner, an Illinois corporation established on December 23, 2010, engages in machine tools manufacturing. It claims to be a subsidiary of [REDACTED] (the foreign entity), located in Dongquan, China, and claims that the foreign entity owns 1000 shares, equal to 100% of its shares. The petitioner seeks to employ the beneficiary as its Vice President of Engineering for an initial period of one year.

The primary issue to be addressed is whether the petitioner established that it has a qualifying relationship with the foreign entity, [REDACTED]. 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 director denied the petition on the sole basis that the petitioner failed to establish that it received monies from the foreign entity in exchange for the 1000 shares. 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.

The director observed that although the petitioner submitted a bank statement showing it received a wire transfer on March 3, 2011 for \$99,980.00 from [REDACTED] the petitioner failed to establish that that the foreign entity initiated the wire transfer.

On appeal, counsel asserts:

[T]he reason that the fund was not transferred on the day the certificate of stocks [sic] was issued was that the international wire transfer of fund was delayed due to complicated procedures to transfer fund internationally. [REDACTED] who was originator of the fund transferred to the U.S., is an affiliated company of [REDACTED] the foreign entity. Certified Business Registration record from Hong Kong Civil Authority and an official joint statement from the foreign entity and [REDACTED] were enclosed, showing the corporate relationship between the two. The reason that [REDACTED] instead of [the foreign entity] transferred the fund is that the Chinese Government prohibits the companies located in Mainland to transfer funds to foreign countries, unless they have special certificate issue by the Government. [The foreign entity] is located in Mainland China, and does not have certificate from the Government, and it opts to use its Hong Kong affiliate [REDACTED] to transfer the fund instead.

To support the appeal, the petitioner submits the current Hong Kong business registration for [REDACTED] and a "Certificate" stating that the foreign entity "is set up by [REDACTED] in Dongguan China."

Upon review, the AAO finds that the petitioner's explanation for why it received monies from [REDACTED] instead of directly from the foreign entity is not supported by the record. The "Certificate" submitted on appeal states only that the foreign entity "is set up by [REDACTED] in Dongguan China." The "Certificate" does not state in any way that [REDACTED] transferred the funds to the petitioner on behalf of the foreign entity in exchange for the issuance of shares to the foreign entity. The petitioner failed to submit the foreign entity's bank statements or other financial documents to demonstrate that the \$100,000 wired by [REDACTED] originated from or were initiated by the foreign entity.

The petitioner also failed to establish that [REDACTED] is an affiliate of the foreign entity. As noted above, the "Certificate" states only that the foreign entity "is set up by [REDACTED] in Dongguan China." The "Certificate" does not state the exact relationship between the foreign entity and [REDACTED]. The petitioner submitted no corporate documents for either the foreign entity or [REDACTED] to show that the two companies share common ownership and control. In the RFE, the director specifically requested the petitioner to submit the foreign business's annual report that lists all of its affiliates, subsidiaries, and branch offices, and percentage of ownership, as well as a detailed list of all owners of the foreign entity and what percentages they own. The petitioner did not comply with the director's request to submit evidence of the foreign entity's affiliates, subsidiaries, branch offices, and owners, thereby precluding USCIS from verifying that [REDACTED] is an affiliate of the foreign company as claimed.¹ Any 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).

¹ While the petitioner claimed in its response to the RFE that [REDACTED] of the foreign entity, the petitioner failed to submit documentary evidence to support this claim. The petitioner submitted only the foreign entity's Business License highlighting that its "Legal Representative" is [REDACTED]. This document does not list the entity's owners and therefore does not establish that [REDACTED] is the [REDACTED].

The only document the petitioner submitted to suggest that [REDACTED] is an affiliate of the foreign entity is an invoice jointly issued by [REDACTED] and the foreign entity to a company in Germany. However, this joint invoice, alone, is insufficient to establish that [REDACTED] is an affiliate of the foreign entity. At the most, this joint invoice shows that [REDACTED] and the foreign entity conducted one business transaction together.

Although not addressed by the director, a careful review of the record reflects additional evidentiary deficiencies with respect to the petitioner's claimed qualifying relationship with the foreign entity. In particular, the petitioner claims that it issued 1000 shares to the foreign entity representing 100% of the petitioner's shares, but the petitioner failed to submit credible evidence to support this claim.

The petitioner submitted a copy of its stock certificate number 1 reflecting that the petitioner purportedly issued the foreign entity 1000 shares on January 22, 2011. However, this stock certificate, alone, is insufficient evidence of the foreign entity's claimed ownership. 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 a corporation's ownership and control. The petitioner failed to submit its corporate stock certificate ledger and stock certificate registry, thereby failing to establish how many total shares it has issued and what percentage of its total issued stock the foreign entity owns, if any. In addition, stock certificate number 1 is missing the corporate seal, although the certificate states that the corporate seal was to be "hereunto affixed."

A careful review of the petitioner's "Minutes of First Meeting of Board of Directors of [the petitioner]" reflects that this document is not credible or probative of the petitioner's claim that the foreign entity owns 1000 shares. The minutes state that the petitioner resolved to issue 1,000 shares of the corporation to [REDACTED] upon receipt of consideration of \$100,000.² The minutes make no mention of a resolution to issue shares to the foreign company, thereby undermining the petitioner's claim. Furthermore, the minutes state that "[t]he first meeting of the Board of Directors of [the petitioner] was held on the date, time and at the place set forth in the written Waiver of Notice signed by all the Directors. . . ." However, the attached Waiver of Notice of First Meeting of Shareholders was unsigned, undated, and incomplete, with critical information about the corporation's name, the place of meeting, the date of meeting, and the time of meeting all left blank.

The petitioner submitted a "Written Consent of the Directors of [the petitioner] in Lieu of the Organizational Meeting," dated January 22, 2011, reflecting that the petitioner resolved to issue 1000 shares to the foreign company on certificate number 1, effective December 23, 2010. This document appears to conflict with the "Minutes of First Meeting of Board of Directors of [the petitioner]," which states that the petitioner will issue 1000 shares to [REDACTED] not to the foreign entity. Furthermore, this document appears to be missing the signatures of all the directors. The "Written Consent of the Directors of [the petitioner] in Lieu of the Organizational Meeting" clearly lists the directors as [REDACTED] the beneficiary [REDACTED], and [REDACTED] and concludes with this statement: "In witness whereof,

² The petitioner failed to submit credible evidence establishing what percentage of ownership [REDACTED] holds in the foreign company. See Footnote 1, supra.

the undersigned, being the Directors of the Corporation, has executed this written consent as of the 22nd day of January, 2011.” However, the document bears only the signature of [REDACTED]

For the reasons discussed above, the petitioner failed to submit credible evidence to establish that it has a qualifying relationship with the foreign entity. Therefore, the appeal must be dismissed.

Beyond the decision of the director, the record does not contain sufficient documentation to persuade the AAO that the beneficiary would be employed in a primarily managerial or executive capacity as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), or that the petitioner would support such a position within one year of approval of the petition. See 8 C.F.R. § 214.2(l)(3)(v). For this additional reason, the petition cannot be approved.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). In the instant matter, the petitioner failed to submit a credible description of job duties for the beneficiary. The beneficiary's proposed job duties in the United States are exactly the same as the job duties the beneficiary performed for the foreign company. The AAO is not persuaded that the beneficiary, whom the petitioner seeks to employ in the United States for the express purpose of “start[ing] up U.S. operations,” can realistically perform the exact same job duties as he did when he was working for the foreign entity, when he was head of the engineering department that employed eight employees in the Research and Development Division, twelve employees in the Engineering Services Division, and sixteen employees in the Design Division, within the first year of the petitioner's U.S. operations. The petitioner currently employs only three employees, namely [REDACTED], the beneficiary [REDACTED] and [REDACTED]. According to the petitioner's organizational chart, the beneficiary has only two proposed subordinate employees: an Engineer I, and an Engineer II, both of which are currently vacant. Even the scope of the beneficiary's responsibilities and level of authority in the United States, which is to provide after-sales technical support and related services to users, is significantly different compared to the scope of his responsibilities with the foreign entity, which was to oversee the entire Engineering Division, including research and development (R&D), and all engineering services.

Lastly, the petitioner described the beneficiary's proposed job duties in the United States in vague and overly broad terms. The petitioner listed job duties such as “takes ownership of the assigned projects to drive targeted results for schedule, quality and costs,” and “drive results through inspired leadership and accountability with a focused and disciplined approach to engineering services.” This type of vague and broad language provides little, if any, insight on the beneficiary's actual daily activities in the United States. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *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). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.*

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.