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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

D7

[Redacted]

DATE: **SEP 27 2012**

Office: VERMONT SERVICE CENTER

FILE: [Redacted]

IN RE: Petitioner:
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 Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking approval of the beneficiary's employment as a 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 New York corporation, states that it operates an import/export business. It claims to be a subsidiary of [REDACTED] located in Sawabi, Pakistan. The petitioner seeks to extend the beneficiary's employment in the position of president for an additional period of three years.

The director denied the petition, concluding that the record does not establish that there is a qualifying relationship between the petitioner and the foreign entity, or that the United States operation is financially viable.

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 came to erroneous conclusions of law and fact in the denial. Counsel submits a brief and additional evidence in support of the appeal.

I. The Law

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 record indicates that the beneficiary was initially granted one year in L-1A classification in order to open a new office. Therefore, the petitioner is also required to submit evidence to satisfy the requirements for new office extensions at 8 C.F.R. § 214.2(l)(14)(ii).

II. The Issue on Appeal

The first issue to be discussed in the present matter is whether the petitioner has established that it has a qualifying relationship with the beneficiary's overseas employer. 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 regulation at 8 C.F.R. § 214.2(l)(14)(ii)(A) requires the petitioner to provide evidence that the United States and foreign entities are still qualifying organizations.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on March 22, 2010. On the L Classification Supplement to the Form I-129, the petitioner indicated that it is a subsidiary of [REDACTED] and described the stock ownership and managerial control of each entity as follows:

[REDACTED]

In a letter dated March 17, 2010, the petitioner stated that the "U.S. corporation is 100% owned by the beneficiary." The petitioner indicated on its 2009 and 2010 IRS Forms 1120, Schedule K, that the U.S. entity is not owned by any foreign or domestic corporation, partnership or trust directly by 20% or more, or indirectly by 50% or more. The petitioner also submitted a document entitled "Corporate Ownership" stating the following:

[REDACTED] is a subsidiary of the foreign corporation and is 100% owned by the beneficiary and she is the corporate president. The beneficiary is the main founder and investor of the business in the United States and continues to be in complete charge of all policy and decision making.

The director issued a request for evidence ("RFE") on May 28, 2010, in which he instructed the petitioner to submit additional "evidence of shares or evidence to establish who owns the foreign company."

Counsel for the petitioner submitted a letter dated June 26, 2010 in response to the director's RFE. Counsel for the petitioner stated that the foreign company "is owned by two brothers," each a 50% owner. As evidence of ownership the petitioner attached a foreign bank statement in the name of one of the owners, a letter from the government addressed to one of the owners regarding a business proposition, and the foreign company's telephone bills in the name of one of the owners. The petitioner did not submit any documents in the names of both owners.

The director denied the petition on August 30, 2010 concluding that the record does not establish that a qualifying relationship exists between the petitioner and the foreign employer. The director found that the U.S. company is wholly owned by the beneficiary and the foreign entity is owned by two individuals, neither of whom are the beneficiary.

On appeal, counsel contends that a qualifying relationship exists in that the beneficiary "only represents the interest of her employer which is the [REDACTED]. In support of this assertion, the petitioner submits a "Power of Authority" that certifies that [REDACTED] give the power of authority" to the beneficiary to "open and operate a business company in the US on our behalf." The document clarifies that the foreign entity "keep[s] the right to take over [REDACTED] from the beneficiary at any time without notice.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the petitioner and the foreign employer have a qualifying relationship.

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'r 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.*, *supra*. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The petitioner failed to submit sufficient corroborating documentary evidence regarding ownership of both the U.S and foreign entities. As evidence of ownership of the foreign entity, the petitioner submits a foreign bank statement in the name of one of the alleged owners, a letter from the government addressed to one of the alleged owners regarding a business proposition, and the foreign company's telephone bills in the name of one of the owners. None of these documents meet the criteria described above to determine whether the claimed individuals actually own and control the corporate entity. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Additionally, the only documents submitted with respect to the ownership of the petitioning entity are the Articles of Incorporation. The Articles of Incorporation alone do not describe the ownership structure of the entity, rather other corporate documentation including the operating agreement, bylaws, meeting minutes, stock certificates, and a stock ledger are necessary to establish ownership. Again, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Assuming *arguendo* that the petitioner established the claimed ownership structure of both the petitioner and the foreign employer, this structure does not meet the qualifying relationship requirements of 8 C.F.R. § 214.2(l) showing that the two entities are either one employer or related entities. Here, there is no commonality of ownership between the two entities. The mere fact that the beneficiary was "authorized" by the foreign employer to open a business in the United States does not change the fact that it is the beneficiary herself who is the actual claimed owner of the United States entity, and not the foreign employer or either of its owners in their individual capacity.

Due to the deficiencies detailed above, the petitioner has not met its burden to establish that the petitioner is a subsidiary, affiliate, parent, or branch of the foreign company. Accordingly, the appeal will be dismissed.

With respect to the director's conclusion that the beneficiary was not paid by the petitioning entity for 2010, the petitioner submits sufficient documentation on appeal to show that the beneficiary was in fact paid by the petitioner for all of 2010. The director's finding to the contrary will be withdrawn.

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.