



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **FEB 28 2013** Office: VERMONT 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 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 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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 AAO will summarily dismiss the appeal.

The petitioner filed a nonimmigrant visa petition seeking to employ the beneficiary in the position of software engineer & developer for three years as an L-1B 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). To establish L-1 eligibility under section 101(a)(15)(L) of the Act, 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. The petitioner must further establish that the beneficiary 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.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been or will be employed in a specialized knowledge capacity. In the decision, the director specifically addressed how the petitioner offers a 22-day training course on its products to anyone for a fee, how the petitioner failed to explain why the beneficiary's experience with its products is specialized and advanced, and how the shortage of labor within the petitioning company does not establish that the beneficiary's knowledge is specialized or advanced.

On appeal, counsel for the petitioner challenges the director's decision in a general manner. Specifically, counsel explains that the petitioner's client, [REDACTED] is "in the final stages of a critical software project/implementation that has a December 15th deadline" and that the beneficiary's "experience and unique skill set is needed" for the project. Counsel asserts that the beneficiary has a "critical and tenured unique skill set that has been used on very critical and time sensitive 'OpenFrame' product projects similar to [REDACTED] project," and restates the beneficiary's prior work experience, which was already provided for the record. Counsel describes how American jobs are at risk if the petitioner's project at [REDACTED] is not successful, how the petitioner was forced to downsize its U.S. presence, and how the [REDACTED] project is needed to "reinvigorate our local presence in NJ and spring board additional metro area business." Counsel then states:

We have staff on site and have encountered a critical technical issue that will require the unique skill of [the beneficiary]. This is not the type of skill set that someone can be trained on in the near-term and it requires experience and firsthand knowledge of having interacted in similar technical implementation scenarios. The tenured experience of our engineer [the beneficiary] can be compared to that of a skilled experienced doctor. Although we are not dealing with the bugs of illness we are dealing with software bugs that can have similar catastrophic consequences for [REDACTED] project in that it can kill the implementation if not address as soon as possible by a skilled mind and hand. Each day that passes, our timing to have someone onsite to help becomes ever more critical for the project deadline. Unfortunately we believe we did not effectively articulate the critical need, regarding [the beneficiary's] experience and the [REDACTED] deadlines for pulling the plug on our project in our earlier communication with the U.S. Citizenship and Immigration Services. Moreover the implementation is very dynamic and [the beneficiary's] experience and unique skills will

minimize the impact of unpredictable additional technical problems as the project is pushed through the stress testing in its final stages [sic].

In support of the appeal, counsel submitted a brief letter from Congressman [REDACTED], expressing his support for the petitioner. This letter was accompanied by copies of letters written to Congressman [REDACTED] from [REDACTED] Vice President of Business Development of the petitioner, and [REDACTED], Vice President of Human Resources and Finance of the petitioner, both of which generally expressed the importance of the beneficiary to the petitioner's [REDACTED] project, which in turn would affect the petitioner's economic success and "the future of new US jobs and new business."

The 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.

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition. The petitioner has not specifically identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. On appeal, the petitioner merely restates in a generalized and broad manner that the beneficiary has unique "experience and skills" and that the beneficiary is important to the petitioner's [REDACTED] project. The petitioner also expresses on appeal how its financial success and U.S. jobs are at risk from the [REDACTED] project. However, none of the petitioner's assertions on appeal specifically address the director's finding that the petitioner failed to establish that the beneficiary has been or will be employed in a specialized knowledge capacity. For this reason, the appeal will be summarily dismissed.

Beyond the decision of the director, the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign 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 petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it is a subsidiary of the beneficiary's foreign employer, [REDACTED], based in Seoul, South Korea ("the foreign entity"). The petitioner indicated on Form I-129 that it is 49.98% owned by the foreign entity, and 49.98% owned by [REDACTED], who also owns 50.23% of the foreign entity.

As evidence of the qualifying relationship, the petitioner submitted the following:

1. The foreign entity's Corporation Register;
2. The petitioner's Certificate of Incorporation, filed in the State of Delaware on May 1, 2002, stating in pertinent part that the "total number of shares of common stock which the corporation shall have authority to issue is 100,000";
3. The petitioner's stock certificate number 1 issued to [REDACTED] for 25,000 shares on May 1, 2002;
4. The petitioner's stock certificate number 2 issued to [REDACTED] for 24,975,000 shares on August 12, 2002;

5. The petitioner's stock certificate number 3 issued to the foreign entity for 25,000,000 shares on August 28, 2002;
6. The petitioner's stock certificate [number illegible] issued to [REDACTED] for 1,000,000 shares on January 21, 2003;
7. The petitioner's stock certificate number 4 issued to [REDACTED] for 1,000,000 shares on November 13, 2002, which is missing the signature of the petitioner's president; and
8. The petitioner's "Officers Certificate" attesting to the following ownership: the foreign entity owns a total of 25,000,000 shares; [REDACTED] owns a total of 25,000,000; and [REDACTED] owns a total of 2,000,000 shares.

The petitioner failed to establish that it is a subsidiary of the foreign entity. Assuming *arguendo* that the foreign entity owns 49.98% of the petitioner as claimed on Form I-129, the petitioner does not qualify as a "subsidiary" as defined by the regulations. Specifically, 8 C.F.R. § 214.2(l)(1)(ii)(K) defines a "subsidiary" as "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 "less than half of the entity, but in fact controls the entity." The foreign entity's purported 49.98% ownership interest does not constitute ownership of "more than half" of the outstanding shares. The petitioner submitted no documents to establish who has control of the U.S. entity.

Moreover, most of the petitioner's stock certificates appear *prima facie* invalid. The petitioner's Certificate of Incorporation clearly states that "the total number of shares of common stock which the corporation shall have authority to issue is 100,000." The petitioner submitted no proof that it amended its Certificate of Incorporation to allow for the additional issuance of stock exceeding the original 100,000 shares. Therefore, the petitioner's stock certificates numbers 2, 3, 4, and 5, representing the issuance of 24,975,000 shares, 25,000,000 shares, 1,000,000, and 1,000,000 shares, respectively, appear to have been issued without authorization. In addition, stock certificate number 4 is missing the signature of the petitioner's president and further appears to have been issued without authorization.

Finally, the petitioner failed to establish that it and the foreign entity qualify as "affiliates" based upon common ownership by [REDACTED]. Although on Form I-129 the petitioner claimed that [REDACTED] owns more than half of the foreign entity, the petitioner submitted no corporate documentation to corroborate this claim. Regardless, even assuming *arguendo* that [REDACTED] owns more than half of the foreign entity, the petitioner failed to establish that [REDACTED] owns more than half of the petitioner's outstanding shares. See 8 C.F.R. § 214.2(l)(1)(ii)(L). The petitioner depicted [REDACTED] ownership interest as totaling 49.98%.

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. The petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.