



U.S. Citizenship
and Immigration
Services

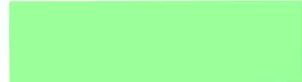
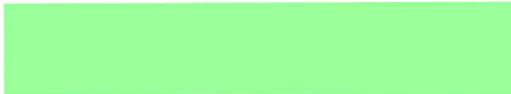
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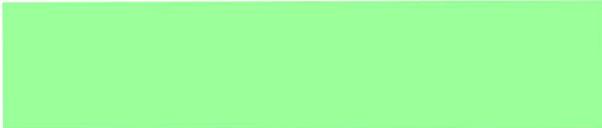
JUN 20 2013

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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 petition seeking to classify the beneficiary 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 [REDACTED] limited liability company established in 2006, stated in the petition that it develops and manages entertainment clubs and lounges. It claims to be a subsidiary of [REDACTED] in the [REDACTED]. The petitioner seeks to employ the beneficiary as the Chief Executive Officer for an additional period of three years.

After approving the petition, the director subsequently issued a notice of intent to revoke. After receiving the petitioner's response, the director revoked the petition's approval, concluding that the petitioner and the foreign organization did not have a qualifying relationship. The director further concluded that the foreign organization was no longer doing business, and, the petitioner failed to establish that the beneficiary has been, and will be, employed in a managerial or executive capacity.

The petitioner subsequently filed an appeal. On appeal, the petitioner asserts that the director made incorrect findings of law and fact.

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.

II. The Issues on Appeal

The issue to be addressed is first, whether the petitioner established that it has a qualifying relationship with the foreign employer, and second, whether the beneficiary will be employed in a primarily managerial executive capacity.

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)(1)(ii)(G).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker on September 4, 2009. The petitioner indicated on the Form I-129 that it develops and manages entertainment clubs and lounges with approximately 113 employees and consolidated gross annual income of \$6.5 million. The petitioner claimed on the Form I-129 that it is a wholly owned subsidiary of [REDACTED]

In a statement submitted in support of the petition, the petitioner described the relationship as follows:

The Petitioner was organized as a wholly owned subsidiary of the Foreign Company. The Foreign Company is the sole member of the Petitioner as appears from Petitioner's Certificate of Member Interest dated February 9, 2009 and Membership Roll.

The petitioner provided the Articles of Incorporation filed February 9, 2006 and a membership certificate issued to [REDACTED] for 100% of the membership interest in the petitioner dated February 9, 2006. As evidence of the foreign ownership, the provided the amended and restated "Articles of Organisation" for [REDACTED] dated January 5, 2006, which indicates that the company was established in the [REDACTED]

The petitioner also provided the 2008 IRS Form 1065, Return of Partnership Income for [REDACTED]. The return indicates that the owners of [REDACTED] are the beneficiary, with a 49 percent interest, and [REDACTED], a domestic limited liability company domiciled in California. The record contains no further information regarding a U.S. company called "[REDACTED]"

The director approved the petition. The director subsequently issued a Notice of Intent to Revoke ("NDI") on March 10, 2011 in which he instructed the petitioner to submit, *inter alia*, evidence that the foreign entity and the United States entity continued to do business. Specifically, the director noted that the foreign employer is not registered in the United Kingdom. Furthermore, the director noted that the United States petitioner's status was "Revoked" in the State of Nevada.

The petitioner responded, stating that the [REDACTED] is not located in the United Kingdom and provided the appropriate documentation to show that the foreign employer was properly registered in the [REDACTED] and

continued to do business. The petitioner provided a new Certificate of Existence with Status in Good Standing for the State of Nevada as of March 2, 2010, to demonstrate that the revoked corporate status had been reinstated.

The director ultimately revoked the petition, stating that the petitioner failed to establish that the foreign entity continued to do business and therefore a qualifying relationship was not established with the U.S. petitioner. The director overlooked the petitioner's evidence regarding the foreign employer's registration and business conducted in the [REDACTED] and restated the conclusion that the business was not registered in the United Kingdom. The director also again noted that the petitioner's corporate status in Nevada was revoked and gave no weight to the document as evidence of the petitioner's ability to conduct business.

On appeal, counsel for the petitioner again states that the foreign entity is organized under the laws of the [REDACTED] and not the United Kingdom.¹ The petitioner again provided a copy of the Certificate of Organization, Articles of Organization, and Operating agreement for [REDACTED]. The petitioner also provided again its Certificate of Existence with Status in Good Standing, dated March 2, 2010, for the state of Nevada.

The petitioner provided an "updated Organizational Chart based on acquisitions and other like activities by Petitioner since its initial Response." The organizational chart shows the petitioner as "100% owned by [REDACTED]"

On August 1, 2012, the AAO issued a Notice of Derogatory Information/Request for Evidence ("NDI"). Upon review of the record, the AAO found insufficient evidence to establish the current ownership of the U.S. petitioner. The AAO noted that according to the Nevada Secretary of State website, the petitioner's corporate status had been revoked for a second time following the March 2010 reinstatement. The AAO also noted the discrepancies regarding the evidence of ownership that was submitted in support of the initial petition, as stated above. Specifically, the 2008 IRS Form 1065, Return of Partnership Income for [REDACTED] indicated that the owners of [REDACTED] are the beneficiary, with a 49 percent interest, and [REDACTED] as a *domestic* limited liability company domiciled in California. The record contains no further information regarding a U.S. company called [REDACTED]. The AAO stated that the information provided in the petitioner's tax return fails to corroborate the petitioner's claim that the company is a wholly-owned subsidiary of the foreign entity.

The petitioner responded on August 30, 2012. In a memorandum dated August 28, 2012, the petitioner described the qualifying relationship as follows:

On January 1, 2008, [REDACTED] pursuant to a Members Resolution acquired 49% member interest in Petitioner with the remaining 51% of member interest owned by [REDACTED]. Petitioner's 2008 IRS Form 1065 and subsequent tax returns for 2009 and 2010 accurately reflected the ownership interests in Petitioner. The reference to [REDACTED] as a *domestic limited liability company domiciled in California* was inaccurately stated in the Schedule K-1

¹ The AAO takes administrative notice that the [REDACTED] is a self-governing [REDACTED] located in the [REDACTED]. As an independently administered jurisdiction, the [REDACTED] does not form part of the United Kingdom. However, as the director also based the determination on the status of the Nevada corporation, this comprises harmless error on the director's part.

attached to the respective returns. As a consequence Petitioner prepared amended Schedule K-1 forms affirming [REDACTED] as a foreign partner (Member) in Petitioner...

The petitioner provides copies of the IRS Form 1065, Return of Partnership Income for [REDACTED] for the years 2008, 2009, and 2010. The 2008 and 2009 returns contain two Schedule K-1s, the first showing the domestic address for [REDACTED], and the second showing the [REDACTED] address. The Schedule K-1s are marked at the top as "Amended." The petitioner included in a separate "exhibit only" copies of the 2009 and 2010 amended K-1s.

The petitioner also provided a copy of an Additional Members Resolution dated January 1, 2008. The resolution amended the operating agreement dated February 9, 2006. The resolution shows that the total agreed value of member's interest in the petitioning entity belongs 51% to the foreign employer and 49% to the petitioner. The petitioner did not provide newly issued membership share certificates evidencing the new ownership structure.

Finally, the petitioner submitted a new Certificate of Existence with Status in Good Standing for the State of Nevada, to demonstrate that the revoked corporate status had been again reinstated as of August 24, 2012, following receipt of the AAO's NDI.

Upon review, and for the reasons stated herein, the petitioner has not established that it maintains a qualifying relationship with the foreign employer as defined at 8 C.F.R. § 214.2(l)(1)(ii)(G).

First, the repeated revocation of the petitioner's corporate status raises serious doubts about the continued viability of the United States petitioner. The petitioner's corporate status has been reinstated twice after revocation, once on March 10, 2010 and again on August 24, 2012. In both instances, the petitioner reinstated its corporate status only after USCIS put the petitioner on notice of the defect. The revocation of the petitioner's corporate status was noted after the consular visa interview, by the director at the time of the NOIR, and again by the AAO on appeal.

In response to the AAO's NDI, the petitioner did not explain the circumstances or the timing of the second revocation of the petitioner's corporate status. Upon review, the AAO cannot determine whether this revocation occurred before or after the director's decision. Nor did the petitioner explain how it was authorized to conduct business when its status had been revoked. According to Nevada state law, once the status of an LLC is revoked, it forfeits its right to transact business. *See* NRS 86.274(2).

Accordingly, it was appropriate for the director to cite to the revocation of the petitioner's status in the revocation decision, despite the submission of a new Certificate of Existence with Status in Good Standing showing reinstatement. Similarly, without explaining the circumstances or how the LLC might lawfully conduct business, the submission of a new Certificate in response to the AAO's NDI is equally ineffective.

Fundamental to this nonimmigrant classification, the petition must be filed by a United States importing employer. Section 214(c)(1) of the Act. In order to meet the definition of "qualifying organization," there must be a United States employer that is doing business as an employer. *See* 8 C.F.R. 214.2(l)(1)(ii)(G)(2). Even if the revocation might be excused as a technical matter under state law, the repeated lapses and revocations of the petitioner's corporate status raise serious doubt regarding its viability as a "qualifying

organization” for purposes of this nonimmigrant visa petition. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Second, the information submitted on appeal materially changes the ownership structure previously represented for the petitioning entity. The petitioner consistently claimed since the date of filing, September 4, 2009, through the time of the response to the Director’s Notice of Intent to Revoke on March 9, 2010, that the petitioner is a wholly owned subsidiary of the foreign employer.

Now, in response to the AAO’s NDI, the petitioner states that since January 1, 2008, prior to the date of initial filing, the organization has been 51% owned by the foreign organization and 49% owned by the beneficiary. The petition has not provided any explanation as to why it failed to disclose this information in the original petition, in response to the notice of intent to revoke, or on appeal. Again, the doubt cast on the petitioner's proof leads the AAO to reevaluate the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. at 591.

With respect to the discrepancies on the petitioner’s tax returns, the petitioner failed to credibly explain the error. The petitioner’s tax returns do not contain any evidence, including a transmission from the preparer or amendment filing sent to the IRS, to show that an amendment was actually filed. The petitioner also failed to provide any credible explanation as to why the error was made. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. Simply asserting that the reported ownership was an error does not qualify as independent and objective evidence. 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).

Furthermore, evidence that the petitioner creates after USCIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. See *Matter of Ho*, 19 I&N Dec. at 591. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the director's notice.

The purpose of an NDI or request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new, materially different organizational structure. The petitioner must establish that the corporate relationship that the petitioner claimed when the petition was filed merits approval. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm’r 1978). If significant changes are made in response to an NDI, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

The petitioner has not established that it maintains a qualifying relationship with the foreign employer.

B. Managerial or Executive Capacity

The second issue to be addressed is whether the petitioner has established that the beneficiary has been and will be employed in a position that is primarily executive or managerial in nature. See sec. 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44); 8 C.F.R. § 214.2(l)(3)(ii). Upon review, the AAO will summarily affirm and

adopt the director's well-reasoned finding that the beneficiary has not been and will not be employed in a primarily managerial or executive position.

III. CONCLUSION

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the AAO must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Here, as previously discussed, the submitted evidence is neither probative nor credible. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, any time a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions.

Accordingly, the petitioner has not established the beneficiary's eligibility for the requested nonimmigrant visa classification. The director properly issued notice and ultimately revoked approval of the petition pursuant to 8 C.F.R. § 214.2(l)(9)(iii)(A).

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.