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



U.S. Citizenship
and Immigration
Services



JUN 25 2015

DATE:



IN RE:

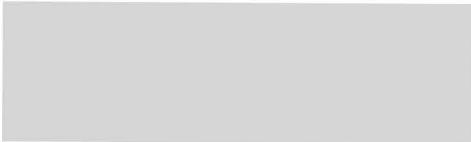
Petitioner:



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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this Form I-129, Petition for a Nonimmigrant Worker, to extend the beneficiary's status 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 petitioner, a New Jersey corporation established in [REDACTED] operates a textile, knit wear and clothing distribution business. It claims to have a qualifying relationship with [REDACTED] located in Bangladesh. The petitioner currently employs the beneficiary as its Chief Executive Officer and now seeks to extend his L-1A status for three additional years.

The director denied the petition, concluding that the petitioner did not establish that it has a qualifying relationship with the beneficiary's foreign employer.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal the petitioner concedes that the previously provided evidence "may have been incomplete, misleading or misinterpreted by USCIS." However, the petitioner claims that any errors were due to the carelessness of its prior counsel. The petitioner indicates that it has corrected the errors, and asserts that the inconsistencies in the documentation do not invalidate its existing affiliate relationship with the beneficiary's foreign employer.

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. Qualifying Relationship

The sole issue addressed by the director is whether the petitioner has established that it has a qualifying relationship with the beneficiary's last 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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
 - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
 - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

* * *

- (K) *Subsidiary* means 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 owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

A. Facts and Procedural History

The petitioner filed the Form I-129 on February 2, 2014. The petition indicated on the Form I-129 Supplement L that it is a wholly owned subsidiary of [REDACTED]. On the Form I-129, the petitioner identified the beneficiary's employer in Bangladesh as [REDACTED]. In a letter dated January 29, 2014, the petitioner stated that it "is a part of [REDACTED] which is comprised of three other companies, all located in Bangladesh. The petitioner indicated that the other group companies include [REDACTED] and [REDACTED]."

The petitioner stated that the beneficiary was last employed abroad as the directing manager and CEO of [REDACTED]. The petitioner submitted a letter from the Director of [REDACTED] certifying that the beneficiary served as its managing director from 2000 until 2009. Evidence of the beneficiary's employment abroad also includes an organization chart identifying the beneficiary as the Managing Director and CEO of [REDACTED] and position descriptions for [REDACTED] identifying the beneficiary as the managing director.

The petitioner submitted Articles of Association for [REDACTED] and [REDACTED]. The petitioner also submitted a separate Memorandum of Association for [REDACTED]. Both documents for [REDACTED] are dated February 14, 2002; however, they reflect different ownership interests in the company. The Memorandum of Association reflects the following ownership: (1) [REDACTED] (300 shares); (2) the beneficiary (250 shares); (3) [REDACTED] (250 shares); and (4) [REDACTED] (200 shares); while the Articles of Association identify the shareholders as: (1) [REDACTED] (350 shares); (2) [REDACTED] (350 shares); and (3) [REDACTED] (300 shares). The Articles of Association for [REDACTED] indicate the following share ownership: (1) the beneficiary (700 shares), (2) [REDACTED] (300 shares), and (3) [REDACTED] (200 shares).

The petitioner submitted a copy of its New Jersey Certificate of Incorporation indicating that it is authorized to issue 100 shares with no par value. The certificate is dated April 6, 2009. The petitioner also provided the minutes of its organizational meeting dated April 9, 2009 reflecting that the directors of the corporation filed the articles of incorporation on April 9, 2009, and resolved to issue 200 shares to [REDACTED] in exchange for \$50,000. This document was not signed by the company directors. A separate resolution, also dated April 9, 2009, indicated that the petitioner would receive a wire transfer in the amount of \$50,000 from [REDACTED] as consideration for the stock purchase.

The petitioner also provided a copy of its IRS Form 1120, U.S. Corporation Income Tax Return, from 2012. The attached Schedule G, Information on Certain Persons Owning the Corporation's Voting Stock, indicates that [REDACTED] owns 65 percent of the petitioner's voting stock and [REDACTED] owns 35 percent of the voting stock.

The director issued a request for additional evidence ("RFE") informing the petitioner that the evidence submitted was insufficient to establish that it has a qualifying relationship with the beneficiary's foreign employer. The director specifically noted that the record did not contain evidence of ownership and control for [REDACTED]. The director also informed the petitioner that the minutes from the petitioner's organizational meeting indicate that 200 shares of the petitioner's stock were issued to [REDACTED] but the petitioner's ownership remained unclear because the document is unexecuted. The director instructed the petitioner to submit, among other evidence, the following: stock certificates, a stock ledger, proof of stock purchase or capital contribution in exchange for ownership, its most recent tax returns, a detailed list of owners, stock purchase agreements, and its articles of incorporation and bylaws.

In response to the RFE, the petitioner explained that [REDACTED] (also known as [REDACTED]) consists of the aforementioned three companies in Bangladesh. The petitioner indicated that its ownership is demonstrated through the organizational meeting minutes and its stock certificate. The petitioner further explained that the meeting minutes did not specify which company within [REDACTED] would get the shares, and that the 200 shares of stock were eventually issued to [REDACTED]. The petitioner stated that an unexecuted copy of the meeting minutes was inadvertently submitted and provided a signed copy.

The petitioner submitted a copy of its stock certificate number one. The certificate issues 200 shares of the petitioner's stock to [REDACTED]. The certificate states on its face that the total authorized issue is 100 shares without par value. The certificate is undated and does not contain the number of shares in the box titled "shares" in the upper right-hand corner of the document. The petitioner also provided a copy of its "Consent to Action" indicating that its certificate of incorporation was filed with the Secretary of State on April 9, 2009. In addition, the petitioner re-submitted the minutes from its organizational meeting held on April 9, 2009.

The director denied the petition concluding that the petitioner did not establish a qualifying relationship with the beneficiary's foreign employer. The director noted the following inconsistencies and omissions: (1) the certificate of incorporation and stock certificate indicate that the petitioner is authorized to issue 100 shares of stock; however, the organizational meeting minutes and the stock certificate indicate that the petitioner issued 200 shares of stock; (2) the organizational meeting minutes indicate that [REDACTED] was issued 200 shares of stock; while the stock certificate certifies that 200 shares of stock were issued to [REDACTED]; (3) the minutes of the petitioner's organizational meeting and the "consent to action" indicate that the petitioner's certificate was filed on April 9, 2009; whereas the certificate of incorporation indicates it was filed on April 6, 2009; (4) the stock certificate is undated and does not contain the number of shares in the top right-hand corner of the certificate; and (5) the stock certificate contained a misspelling of [REDACTED].

On appeal, that petitioner concedes that the submitted documents were inconsistent. The petitioner explains that its prior counsel submitted erroneous documents. However, the petitioner asserts that the errors do not invalidate the existence of a qualifying relationship with the beneficiary's foreign employer. The petitioner reasserts that it is a wholly owned subsidiary of [REDACTED]

In support of the appeal, the petitioner submits a document titled "Minutes of Special Meeting of the Board of Directors of [REDACTED]". The document states that the petitioner's previous legal counsel improperly and negligently prepared its organizational meeting minutes and stock certificates. The document resolves to change the minutes to reflect that the certificate of incorporation was filed on April 6, 2009, and to indicate that 100 shares of no par value stock are issued to [REDACTED] in exchange for consideration of \$50,000. The document also invalidates the previously submitted stock certificate and authorizes issuance of stock certificate number two. The petitioner provides a copy of the new stock certificate, which indicates the petitioner issued 100 shares of stock to [REDACTED]

B. Analysis

Upon review, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer.

To demonstrate eligibility, the petitioner must establish that the beneficiary's foreign employer, [REDACTED] and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) 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 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 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 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.

The petitioner claims to be a subsidiary of "[REDACTED]"; however, the petitioner also provides evidence that the beneficiary's foreign employer was [REDACTED] a claimed affiliate of [REDACTED]. Therefore, we must examine the relationship between the foreign entities as well as their claimed relationship with the petitioner.

To establish the ownership of [REDACTED] the petitioner has submitted copies of this company's memorandum of association and articles of association, both dated February 14, 2002, which reflect different ownership of shares in the company. The memorandum of association indicates that four individuals own shares of the company, and the beneficiary has 25% ownership, whereas the articles of association indicate that three individuals own shares of the company and the beneficiary has a 35%

ownership interest. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not provided sufficient evidence to establish ownership of the foreign entity.

Further, the petitioner's claimed relationship with the beneficiary's foreign employer is predicated, in part, on the claimed affiliate relationship between [REDACTED] and [REDACTED]. The petitioner has not established that these two companies are owned by the same individual, or that they are owned and controlled by the same group of individuals, with each individual owning and controlling approximately the same share or proportion of each entity. The limited evidence submitted indicates that the beneficiary is the majority owner of [REDACTED] but the evidence does not establish that he is also the majority owner of [REDACTED]. Further, the two companies are not owned by the same group of individuals. Although the petitioner indicates that all companies in the [REDACTED] have common ownership, and we acknowledge that they appear to be owned in various percentages and groupings of members of the same family, this familial relationship does not constitute a qualifying relationship under the regulations. See, e.g. *Ore v. Clinton*, 675 F.Supp.2d 217, 226 (D.C. Mass. 2009) (finding that the petitioner and the foreign company did not qualify as "affiliates" within the precise definition set out in the regulations at 8 C.F.R. § 214.2(l)(1)(ii)(L)(1), despite petitioner's claims that the two companies "are owned and controlled by the same individuals, specifically the [REDACTED]").

The submitted evidence of the petitioner's ownership is also inconsistent. The meeting minutes and stock certificates purport to issue 200 shares of stock to a foreign entity; however, the certificate of incorporation only authorizes the issuance of 100 shares. The stock certificates state that [REDACTED] is the petitioner's sole owner; however, the meeting minutes indicate that [REDACTED] is the sole owner. It is not clear whether [REDACTED] is intended to refer to [REDACTED] or whether this is an entirely separate entity. Further adding to the uncertainty, the petitioner's 2012 corporate tax returns indicate that the petitioner is owned by the beneficiary (65%) and [REDACTED] (35%). Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. 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. at 591-92.

The petitioner submitted a revised copy of the meeting minutes and stock certificates, explaining that the documents were erroneously created and submitted by its prior counsel. The petitioner suggests that the concepts of fairness and due process afforded in removal proceedings by *Matter of Lozada* are also applicable in administrative proceedings. See *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). However, even if we were to apply *Matter of Lozada* in the instant matter, the petitioner has not provided sufficient evidence to demonstrate ineffective assistance of counsel.¹ Going on record without supporting documentary evidence is

¹ Under *Matter of Lozada*, the petitioner must submit: (1) an affidavit setting forth in detail the agreement

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)).

Nevertheless, the petitioner has not provided evidence to demonstrate [redacted] relationship with [redacted], nor has the petitioner explained the information provided in its 2012 tax return, which indicates that the beneficiary is the petitioner's majority owner. In addition, as noted above, the record also contains inconsistent evidence regarding the ownership of [redacted] which prohibits a finding that this entity is a qualifying affiliate of the petitioner's claimed owner, or that it otherwise has a qualifying relationship with the petitioner. The petitioner has not claimed that these discrepancies were as a result of the carelessness of its prior counsel or otherwise attempted to resolve them.

Further, the petitioner did not submit evidence that consideration of \$50,000 was paid by the beneficiary, [redacted] in exchange for shares in the petitioner. Based on the unresolved discrepancies and omissions in the record, the evidence does not establish who actually owns the petitioning company.

For the reasons discussed herein, we can determine neither the petitioner's ownership nor the foreign employer's ownership. Accordingly, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer, and for this reason, the appeal must be dismissed.

III. Additional Issue

Beyond the decision of the director, the petitioner has not established that the beneficiary is employed in the United States in a qualifying managerial or executive capacity.

The petitioner described the beneficiary's current duties as: developing new business opportunities (25%); resolving office matters (15%); establishing company budgets and approving company expenses (15%); establishing marketing plans and budgets (20%); and meeting with prospective buyer executives and establishing a good relationship (25%). The petitioner also provided brief position descriptions for the positions of director of internal affairs, executive secretary, warehouse manager, marketing employee, and sales employee. The petitioner stated that the beneficiary supervises the director of internal affairs, who takes care of the company's legal and accounting matters. The petitioner's corporate tax return indicates that in 2012, the petitioner paid \$33,000 in officer compensation and \$34,182 in salaries and wages.

with former counsel concerning what action would be taken and what counsel did or did not represent in this regard; (2) proof that the [petitioner] notified former counsel of the allegations of ineffective assistance and allowed counsel an opportunity to respond; and (3) if a violation of ethical or legal responsibilities is claimed, a statement as to whether the [petitioner] filed a complaint with any disciplinary authority regarding counsel's conduct and, if a complaint was not filed, an explanation for not doing so. See *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988).

The evidence is insufficient to establish that the beneficiary has been and will be employed in a managerial or executive capacity. The overly broad position descriptions fail to establish the percentage of time the beneficiary spends performing qualifying managerial or executive duties versus non-qualifying duties. 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 not provided 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).

In addition, the petitioner has not provided payroll documents, tax returns, or other evidence to corroborate its claimed staffing levels or to demonstrate that the staffing is sufficient to relieve the beneficiary from performing non-qualifying duties. 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. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by us 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 we review appeals on a *de novo* basis).

IV. Prior Approvals

We acknowledge that U.S. Citizenship and Immigration Services (USCIS) previously approved two nonimmigrant petitions filed on behalf of the beneficiary. In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give some deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir. 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. at 597. Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. at 597.

Therefore, the prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, our authority over the service centers is comparable to the

relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

V. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.