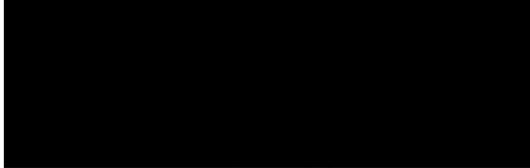




U.S. Department of Justice  
Immigration and Naturalization Service

DJ

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: -WAC-99-223-52475

Office: California Service Center

Date: AUG 15 2000

IN RE: Petitioner:  
Beneficiary:



Public Copy

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrence M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is primarily engaged in developing, distributing, and marketing clothing to various retail outlets in the U.S. It seeks to employ the beneficiary temporarily in the United States as its general manager. The director determined that the petitioner had not established that the petitioner is a subsidiary or affiliate of the beneficiary's foreign employer.

On appeal, counsel states in part that:

The California Service Center is mistaken in its contention that this particular business does not meet the definition of a valid "joint venture"...In this case, [REDACTED] owns 50% of G.L. Design International, Inc.. [REDACTED] also owns 72.90% of [REDACTED] (the Mexican entity). Accordingly, [REDACTED] owns 50% of the 50-50 joint venture known as [REDACTED] and has equal control and veto powers as the other owner.

It appears that the Service requires a joint venture between the domestic company (G.L. Design) and the foreign entity [REDACTED]. I believe the Service is mistaken. A literal reading of the statute states that the foreign entity must own 50% of a 50-50 joint venture. That requirement is met in this case as [REDACTED] a majority owner of [REDACTED] owns 50% of [REDACTED] a 50-50 joint venture.

Finally, the INS stated that there is nothing in the record to show that the U.S. and foreign entities have entered into a joint venture agreement. The INS has refused to recognize relationships that depend solely on contract, and has required some equity and effective control[.]

Counsel had indicated that additional evidence would be submitted in support of the appeal on or before November 19, 1999. To date, no additional evidence has been received. Therefore, the record must be considered complete.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), 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 United States petitioner was established in 1998 and states that it is a joint venture of the Mexican companies, [REDACTED] and [REDACTED]. The beneficiary claims to have been employed as a plant and operations manager for International Sewing of Jilotepec since 1996. The petitioner seeks to extend the employment of the beneficiary for a five-year period at a monthly salary of \$1,850.

At issue in this proceeding is whether a qualifying relationship exists between the U.S. and foreign entities.

8 C.F.R. 214.2(1)(1)(ii)(G) states:

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 (1)(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; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

8 C.F.R. 214.2(1)(1)(ii)(K) states:

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.

8 C.F.R. 214.2(1)(1)(ii)(L) states, in pertinent part:

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.

In her decision, the director noted that the record does not show that the U.S. and foreign entities have entered into a joint venture agreement. The director further noted that the record does not show that both entities are owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity.

The record contains the following:

Articles of Incorporation for [REDACTED] dated July 27, 1998, reflecting the total number of authorized shares as 1,000,000;

Document entitled "Secretary's [REDACTED] dated April 30, 1999, reflecting that 50,000 shares are currently issued and outstanding of which [REDACTED] owns 25,000, and [REDACTED] owns 25,000;

Document dated May 14, 1999, indicating the following ownership of [REDACTED] [REDACTED] 72.90%; [REDACTED] 24.51%; and [REDACTED] 2.59%.

Although counsel argues that the U.S. entity, [REDACTED] joint venture between [REDACTED] and [REDACTED] the record contains no evidence of such. A joint venture is not a continuing business relationship, but a partnership between organizations in the joint prosecution of a particular transaction for a mutual profit. Black's Law Dictionary 753 (5th ed. 1979). Black's further defines a joint venture as:

A one-time grouping of two or more persons in a business undertaking. Unlike a partnership, a joint venture does not entail a continuing relationship among the parties.

The record contains no evidence that the Mexican entities, [REDACTED] and [REDACTED] have entered into a partnership as described above, or that the U.S. entity is a business undertaking for a set period of time. Further, as noted by the director, the record does not demonstrate that a qualifying affiliate relationship exists between the U.S. entity and the beneficiary's foreign employer, [REDACTED] as the record does not show that both entities are owned and controlled by the same group of individuals, each owning

and controlling approximately the same share or proportion of each entity. As such, the record as presently constituted, does not demonstrate that a qualifying relationship exists between the U.S. and foreign entities. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proof 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.