



U.S. Department of Justice
Immigration and Naturalization Service

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



File: SRC-99-036-55400

Office: Texas Service Center

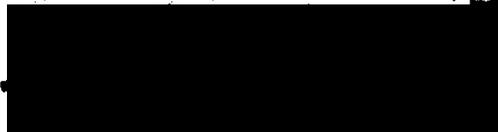
Date: SEP 20 2000

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)

IN BEHALF OF PETITIONER:



Public Copy

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

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

The petitioner, a freight forward and cargo business, seeks to employ the beneficiary temporarily in the United States as its joint venture's general manager. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. and foreign entities.

On appeal, counsel submits a brief in rebuttal to the director's findings.

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, [REDACTED], and the foreign company, [REDACTED], located in Colombia, indicate that they each own 50 percent of a joint venture, [REDACTED] Inc. The petitioner seeks to employ the beneficiary at [REDACTED] Inc., for a three-year period at an annual salary of \$25,000.

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.

In his decision, the director noted that there is no qualifying relationship between the parents by virtue of their joint ownership of a 50-50 joint venture. The director further stated that, "The U.S. entity that can act as the petitioner, in this case, is the joint venture, not the United States parent."

On appeal, counsel states in part that:

The subsidiary relationship offered in the petition was that of a 50-50 joint venture relationship, with equal control and veto power. In the 50-50 joint venture relationship, in fact both entities, the Colombian company and the US petitioner is [sic] to be considered parent companies, in the sense that they both own 50% of the joint venture. Where two parent companies own 50% (joint venture) of a company, that joint venture is a subsidiary of both companies. See Matter of Siemens Medical Systems, Inc. 19 I & N Dec. 362 (Comm. 1986), which stated in part, "The Service will accept the interpretation that a 50-50 joint venture creates a subsidiary relationship for purposes of 101(a)(15)(L) of the Act. Where each of two corporations (parents) owns and controls 50 percent of a third corporation (joint venture), this joint venture is a subsidiary of each of the parents."

In the instant case, the joint venture is an equity joint venture in which capital and capital resources are being supplied. It is clear that the capital is being supplied by the foreign entity and capital resources are being supplied by the US entity...Since the US entity (the petitioner) is supplying relevant resources (including staff, premises, client lists, and cash), it was a reasonable business decision that the US entity would be the employer, i.e., the petitioner.

Also included, and disregarded by the Service in its denial, is the opinion letter from INS headquarters in which this very issue is addressed and confirmed as a viable manner of petitioning. In the denial the Service asserts that this letter confirms the position taken in the denial. This is patently incorrect and illustrates the Service's error. In light of the evidence presented it is clear that the letter is not only relevant, it is clearly on point with regard to two issues; first, it confirms that a 50-50 joint venture is an appropriate qualifying relationship found under the definition of a subsidiary; and second, that the US venture partner (in the case the petitioner [REDACTED] Inc.) may petition for the foreign executive or manager, i.e. the beneficiary.

The record contains the following:

Articles of Incorporation for the petitioning entity, [REDACTED] Inc., dated December 7, 1990, reflecting that its capital stock consists of 100 shares;

Translation of Formalization Documents of [REDACTED] dated May 3, 1996;

Articles of Incorporation for joint venture, [REDACTED] Inc. dated November 10, 1998, reflecting its authorized capital stock as 1000 shares and stating that "The Corporation shall have perpetual existence.";

Share Certificate #01 dated November 10, 1998, reflecting that [REDACTED] is the registered holder of 500 shares of [REDACTED] Inc.;

Share Certificate #02 dated November 10, 1998, reflecting that [REDACTED] Inc. is the registered holder of 500 shares of [REDACTED] Inc.;

Joint Venture Agreement of [REDACTED] Inc., & [REDACTED], signed on November 11, 1998.

The joint venture agreement between [REDACTED] Inc. and [REDACTED] mentioned above, indicates in part that the two such venturers shall have "joint and equal decision making authority, with equal control and veto power" over operations and management matters. In addition, [REDACTED] Inc., and [REDACTED] each own 500 shares of the joint venture corporation, [REDACTED]

██████████ Inc., giving each a 50 percent ownership interest in the joint venture corporation. As such, the record demonstrates that a qualifying subsidiary relationship exists between the U.S. and foreign entities by virtue of a 50-50 joint venture. For this reason, the petitioner has overcome the objection of the director.

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 been met.

ORDER: The appeal is sustained.