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U.S. Department of Justice

Immigration and Naturalization Service

identification data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

File: WAC-97-251-52156 Office: California Service Center Date: MAY 07 2002

IN RE: Petitioner: [redacted]
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: [redacted]

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosen

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: This is a motion to reopen the Associate Commissioner for Examination's decision dismissing the appeal of the denial of the nonimmigrant visa petition. The motion to reopen will be granted and the previous decisions of the director and the Associate Commissioner will be affirmed. The petition will be denied.

The petitioner is engaged in the sourcing and purchasing of chemical and industrial materials, products, and equipment for exportation to Chinese industries. The petitioner will also provide consultation services for the parent company and other Chinese industrial customers. In addition, it will serve to coordinate and facilitate the parent company's trading and marketing business in carbon materials and products. It seeks to employ the beneficiary temporarily in the United States as the president of its new office for three years. The director determined that the petitioner had not provided sufficient evidence to demonstrate that a qualifying relationship exists between the U.S. and foreign entities. The director also determined that the petitioner had not demonstrated the size of the U.S. investment.

On appeal, the petitioner provided sufficient evidence such as bank records to demonstrate the size of the U.S. investment. Therefore, the petitioner had overcome this portion of the director's objection, and the director's decision was affirmed in part by the Associate Commissioner for Examinations.

The Commissioner also stated in his decision that the petitioner had not established whether the beneficiary had been and would be employed in a primarily managerial or executive capacity.

On motion, counsel states that the additional evidence will establish the existence of a qualifying relationship between the petitioner and its parent company.

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 first issue in this proceeding is whether the petitioner provided sufficient evidence to demonstrate that a qualifying relationship exists between the U.S. and foreign entities.

The regulations at 8 C.F.R. 214.2(l)(1)(ii)(G) states:

Qualifying relationship 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 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; and

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

The regulations at 8 C.F.R. 214.2(l)(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.

The United States petitioning entity was incorporated on June 9, 1997. The petition indicates that it is a wholly-owned subsidiary of [redacted] located in Henan, China. The petitioner seeks to employ the beneficiary for a three-year period at an annual salary of $28,000.

The petition indicates that a subsidiary relationship exists between the U.S. and foreign entities as the foreign company is said to own 100 percent of the petitioning entity. The record contains stock certificate number one, which shows that the beneficiary's foreign employer, [redacted] owns 15,000 shares of the petitioner's 1,000,000 authorized shares of stock.

In a non-immigrant petition for an intracompany transferee, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. Matter of Siemens Medical Systems, Inc., 19 I&N Dec. 362 (BIA 1986). Furthermore, a stock certificate is merely written evidence that a named person is owner of a designated number of

shares of stock in a corporation. Black's Law Dictionary (Fifth Edition, West Publishing Company, 1979). As ownership is a critical element of this visa classification, the Service may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. Evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. The record, as it is presently constituted, does not contain evidence to show that the foreign entity actually purchased the above mentioned 15,000 shares of the petitioner's stock.

With this motion, counsel submitted an "Incoming Money Transfer Notification" from the foreign entity to the petitioner dated April 8, 1998. The money transfer was for the sum of $41, 385. Counsel states that this evidence was submitted to prove that the foreign entity had provided for all of the petitioner's capital investments. Counsel also states that this establishes the existence of a qualifying relationship between the petitioner and its parent company. This evidence is not sufficient in demonstrating that the foreign entity actually paid for the petitioner's stock, as the stock certificate was issued June 9, 1997, and the money transfer notification is dated April 8, 1998, almost one year after the shares were claimed to have been purchased by the foreign entity. For this reason, the petition may not be approved.

Further, the additional issues raised by the Commissioner in his decision were not addressed by the petitioner on motion. For this additional 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. Accordingly, the decisions of the director and the Associate Commissioner in part will be affirmed.

ORDER: The Associate Commissioner's decision of June 21, 1999 will be affirmed.