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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: WAC-00-139-52614 Office: California Service Center Date: **MAY 29 2002**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, 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 described as a manufacturer and marketer of automotive and household chemicals. It seeks to employ the beneficiary temporarily in the United States as its manager. The director determined that the petitioner had not established that a qualifying relationship exists between the petitioner and the claimed overseas parent company.

On appeal, the petitioner asserts that a recent sale of company stock created a qualifying relationship between the petitioner and the overseas 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.

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

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge.

8 C.F.R. 214.2(1)(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 (1)(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 performed.

The issue in this proceeding is whether a qualifying relationship exists between the petitioning U.S. company and a foreign company.

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)(I) states:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

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

Branch means an operation division or office of the same organization housed in a different location.

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.

The Articles of Incorporation lists the following individuals as owners of Pilipinas Alpha International Corp. in the Phillipines:

Name	# of shares	percentage
[REDACTED]	256	51.2%
[REDACTED]	100	20%
[REDACTED]	44	8.8%
[REDACTED]	38	7.6%
[REDACTED]	37	7.4%
[REDACTED]	15	3%
[REDACTED]	5	1%
[REDACTED]	5	1%

Evidence of record reveals that at the time the petition was filed, the petitioning U.S. company was owned by the following individuals:

Name	# of shares	percentage
[REDACTED]	7500	37.5%
[REDACTED]	7500	37.5%
[REDACTED]	1250	6.25%

Pursuant to a Notice of Intent to Deny dated December 11, 2000, the petitioner was requested to submit evidence establishing a qualifying affiliate relationship between the petitioning company and the overseas entity. In response, counsel submitted evidence that [REDACTED] appointed [REDACTED] their proxy to vote in stockholders' meetings on March 2, 2000, and that these two individuals sold their shares in the company [REDACTED] on December 28, 2000. However, the qualifying relationship must be shown to have existed at the time of the filing of the petition. See 8 C.F.R. 103.2(b)(12).

On appeal, counsel submits evidence that Carolina R. Gomez sold her shares of the petitioning company to Alberto L. Prado on February 15, 2001. However, as stated above, the qualifying relationship must be shown to have existed at the time of the filing of the petition. See 8 C.F.R. 103.2(b)(12). For this reason, the grounds for denial of the petition have not been overcome and the petition may not be approved.

The petitioner has not established that a qualifying relationship

exists between the beneficiary's foreign employer and a U.S. organization which will employ the beneficiary in the United States. The record contains no evidence to demonstrate that the beneficiary seeks to enter the United States to render his services to a branch of the same employer or a parent, affiliate, or subsidiary thereof, as required by 8 C.F.R. 214.2(1)(1)(ii). 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.