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

[redacted]

File: SRC 01 189 50373 Office: TEXAS SERVICE CENTER Date: FEB 27 2003

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 that 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, Texas Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a telecommunications firm that seeks to employ the beneficiary temporarily in the United States as a project and marketing manager. The acting director determined that the petitioner had not established a qualifying relationship with the foreign entity. The acting director also determined that the petitioner had not established that the beneficiary had been employed as a manager or executive by a qualifying entity abroad for one year out of the three years prior to the filing of the petition. The acting director noted that the petitioner had not demonstrated that the beneficiary had ever worked for Telecom Argentina in any capacity. The acting director also noted that the petitioner's business lease for its office in the United States was only signed by the petitioner and not the landlord. Counsel, on appeal, submitted pay stubs and a letter from the Human Resources Corporate Manager of Telecom Argentina establishing that the beneficiary was employed by Telecom Argentina abroad. Counsel also submitted a copy of the business lease containing both the landlord and petitioner's signatures, thereby, overcoming the concerns of the acting director.

Also on appeal, counsel states that the appeal is filed to remedy the misapplication of law and misapplication of facts upon which the denial was based. Counsel explains that the beneficiary is currently serving the petitioner as a worker in the H-1B nonimmigrant classification. Counsel states that the petitioner, [redacted] Inc. [redacted] was incorporated in the State of Florida on January 8, 2001 and is 100 percent owned [redacted] a holding company organized in Luxembourg. Counsel indicates that [redacted] is, in turn, owned by four major European and South American telecommunications companies, each of which is the dominant telephone company in its country; Telecom Italia S.p.A., Telecom Argentina, Entel Bolivia and Entel Chile.

Counsel explains that [redacted] a company located in Ireland and wholly-owned [redacted] has acquired the right of use of an international fiber-optic ring spreading from the United States around Latin America from Global Crossing. Counsel asserts that [redacted] fully controls the local companies located in each country connected to the LAN network and also wholly-owns [redacted] Counsel states that Telecom Argentina and [redacted] continue to qualify as affiliates because each company is owned and controlled indirectly by the same parent or individual. Counsel further states that Telecom Italia S.p.A. continues to own a controlling share of the equity in [redacted] and a jointly controlled interest in Telecom Argentina.

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 and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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.

The first issue to be addressed in this proceeding is whether the petitioner and the foreign entity are qualifying organizations.

8 C.F.R. § 214.2(l)(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 (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.

8 C.F.R. § 214.2(l)(1)(ii)(I) states:

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

8 C.F.R. § 214.2(l)(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(l)(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(l)(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 acting director determined that the petitioner had not established a qualifying L-1 relationship as of the date the visa petition was filed.

The record shows the U.S. entity is owned by [redacted] headquartered in Luxembourg. [redacted] is owned by four companies as follows:

Telecom Italia	70%
Telecom Argentina	10%
Entel Bolivia	10%
Entel Chile	10%

Telecom Argentina, where the beneficiary was employed from October 1999 to May 2001, is shown to be partially owned by Telecom Italia, one of the four companies listed above. It is noted that Telecom Italia's holding in Telecom Argentina is shown to be only 13.97 percent.

In this case, despite Telecom Italia's majority ownership [redacted] it appears not to be the majority owner of Telecom Argentina, the beneficiary's foreign employer. Consequently, there is no qualifying relationship between Telecom Argentina and the petitioning company.

Based on the foregoing, it is determined that the petitioner has not established that the beneficiary had been employed as a manager or executive by a qualifying entity abroad for one year out of the three years prior to the date the petition was filed. The decision of the acting director to deny the petition is affirmed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought 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.