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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: SRC 01 194 50030 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.

for Myra L. Rosenberg
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is engaged in the importation and manufacture of food products. It seeks to employ the beneficiary temporarily in the United States as its manager. The acting director acknowledges that the petitioner is a new company established in 2001, the same year the visa petition was filed. The acting director noted that the financial documents concerning the foreign entity were in a foreign language and/or in foreign currency without English equivalencies. The acting director then determined that the petitioner had not established that a qualifying relationship exists between the U.S. and foreign entities. The acting director also found that the petitioner had not demonstrated that the foreign company is generating enough profit to pay the beneficiary's salary.

On appeal, counsel states that the director erroneously denied this case based on confusion regarding the ownership interests of the U.S. and parent companies, and doubt regarding the financial capability of the company to pay the beneficiary's salary. Counsel submits further information to clarify the relationship between the foreign and the U.S. entity and a federal credit union checking account statement for the corporation dated February 21, 2002 showing a balance of $81,328.31.

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.

8 C.F.R. § 214.2(l)(3)(v) states that if a petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The petitioner was incorporated in the State of Georgia in February 2001, and the petition was filed in June of 2001. The petitioner requests an L-1A nonimmigrant visa for the beneficiary in order for her to set up its new office in Atlanta.

The first issue to be addressed in this proceeding is whether the petitioner has established that a qualifying relationship exists between the U.S. entity and a foreign entity. The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

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.

Counsel's argument that 50 percent ownership is sufficient to establish a parent-subsidiary relationship is not persuasive. Evidence of ownership and control of the entity is required. Control may be *de jure* by reason of ownership of 51 per cent of outstanding stocks of the other entity or it may be *de facto* by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982).

The petition indicates that the U.S. and foreign companies are "owned 50/50 by Manoj Patel and Shambhubhai Patel." On appeal, the petitioner submits a shareholders agreement for the United States entity establishing that Manoj Patel and Shambhubhai Patel each own 50 percent of the United States corporation. However, in a letter dated February 19, 2002, counsel indicates that Shambhubhai Patel owns 100 percent of the foreign entity and not 50 percent as indicated in the initial petition.

The record now shows that the petitioner's claimed parent company abroad is 100 percent owned by one person, Shambhubhai Patel. The petitioning entity in the United States is owned by two persons, Manoj Patel and Shambhubhai Patel, each owning a 50 percent interest. The two entities are not owned by the same parent or individual, or by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity. The record does not demonstrate that Shambhubhai Patel exercises *de facto* control over Opera Mag House, Inc. through proxy votes or other means. Accordingly, the evidence does not establish that a qualifying subsidiary or affiliate relationship has been shown to exist between the U.S. petitioning entity and the foreign entity which employs the beneficiary. For this reason, the petition may not be approved.

The second issue to be addressed in this proceeding is whether the foreign entity has the ability to remunerate the beneficiary and commence doing business in the United States.

On appeal, the petitioner has not submitted any further financial documentation concerning the foreign entity. The record indicates that the petitioner has opened a bank account for the business here in this country. The foreign entity's balance sheet for the period ending March 31, 2000 is contained in the record. However, this document shows financial amounts in foreign currency and not in United States dollars and, therefore, is of limited evidentiary value in this proceeding. It is determined that the petitioner has not provided sufficient proof of the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States. Therefore, the visa petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that the beneficiary has been employed primarily in a qualifying managerial or executive capacity abroad, or that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States. As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

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.