U.S. Department of Justice

Immigration and Naturalization Service

D7

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

PUBLIC COPY

[redacted]

File: WAC-01-240-50219 Office: California Service Center Date: FEB 28 2003

IN RE: Petitioner:
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:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 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 self-described as a "Restaurant and Import/Export" business. It seeks to employ the beneficiary temporarily in the United States as its vice president. The director determined that the petitioning entity had not demonstrated that a qualifying parent, branch, affiliate, or subsidiary relationship exists between the petitioning entity and a foreign organization and denied the petition.

On appeal, counsel asserts that a qualifying relationship exists between the petitioner and a foreign organization.

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(l)(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(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 performed.

At issue in this proceeding is whether a qualifying relationship exists between the petitioning U.S. entity and a foreign organization.

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.

In a supplement to the initial petition, counsel stated that the beneficiary would work as a vice president of P.B. Thai Café, a joint venture between the petitioner and P.M. Orchid Co., Ltd., located in Bangkok, Thailand.

In a letter dated August 21, 2001, the petitioner was requested to submit additional evidence relating to the relationship between the U.S. petitioner and the beneficiary's foreign employer. Counsel, in response to the Service's request for additional information, submitted a copy of the business plan for P.B. Thai Café. This document reveals that the restaurant "is a general partnership restaurant, owned and operated by [the beneficiary] and P.M. Orchid Co., Ltd. Of Bangkok, Thailand."

The director denied the petition after determining that the petitioner had failed to establish that a qualifying relationship exists between the petitioner and a foreign organization.

On appeal, counsel states that the director's decision was "erroneous" and that the beneficiary's proposed U.S. employer is a joint venture between the petitioner and the beneficiary's foreign employer.

Despite counsel's assertions, the petitioner has not established that a qualifying relationship exists between the beneficiary's foreign employer and the U.S. petitioner. The petitioner provided a copy of a "Joint Venture Agreement" showing that on October 21, 1998, the petitioner and "PM Orchid Company" jointly created a restaurant named "Lotus Thai Cuisine." According to the petitioner, this restaurant was sold in November 1999. The petitioner has failed to provide any evidence of a subsequent business relationship between the petitioner and the beneficiary's foreign employer. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, the assertion that P.B. Thai Restaurant is a joint venture between the petitioning company and P.M. Orchid, Ltd. is contradicted by evidence of record. The business plan which was provided by the beneficiary specifically states that "P.B. Thai Café is a general partnership restaurant, owned and operated by business partners Siriporn Chitraphong of San Diego and P.M. Orchid Co., Ltd. of Bangkok, Thailand." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective

evidence pointing to where the truth, in fact, lies, will not suffice. See Matter of Ho, 19 I&N Dec. 582 (BIA 1988). Consequently, it must be concluded that the petitioner has failed to demonstrate a qualifying relationship with a foreign entity pursuant to 8 C.F.R. 214.2(l)(1)(ii)(G). For this reason, the petition may not be approved.

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary had been employed abroad in a managerial or executive capacity or that the beneficiary would be employed in the United States in a managerial or executive capacity as defined at section 101(a)(44) of the Act. In addition, 8 C.F.R. 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In this case, the petitioner has not furnished evidence that the beneficiary's services are for a temporary period and that the beneficiary will be transferred abroad upon completion of the assignment. As the appeal will be dismissed, these issues need not be examined further.

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.