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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

MAR 28 2003

File: SRC 02 042 57417 Office: TEXAS SERVICE CENTER Date:

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)

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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 Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, [redacted] states that it is an affiliate of a Venezuelan company, [redacted] S.A. The petitioner plans to operate as a full service security and computerized surveillance provider. The U.S. entity was incorporated in the State of Florida on October 2, 2000. In November 2000, the U.S. entity petitioned the Bureau to classify the beneficiary as a nonimmigrant intracompany transferee (L-1). The Bureau approved the petition as valid from January 16, 2001 to January 15, 2002. The petitioner now endeavors to extend the petition's validity and the beneficiary's stay for two years. The petitioner seeks to employ the beneficiary's services as the U.S. entity's president and managing director at an annual salary of $24,000. The director determined, however, that the petitioner failed to establish a qualifying relationship between the U.S. entity and the Venezuelan company. Consequently, the director denied the petition.

The petitioner submitted an appeal to the director captioned "Motion to Reconsider and Reopen." In accordance with 8 C.F.R. § 103.3(a)(2)(iv), the director declined to treat the appeal as a motion and, in turn, forwarded the appeal to the AAO for review. On appeal, the petitioner's counsel asserts that the petitioner demonstrated a qualifying relationship between the U.S. and Venezuelan entities.

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 meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

Under 8 C.F.R. § 214.2(l)(3), 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.
>
> (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization with the three years preceding the filing of the petition.
>
> (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended serves in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Pursuant to 8 C.F.R. § 214.2(l)(14)(ii), a visa petition that involved the opening of a new office under section 101(a)(15)(L) may be extended by filing a new Form I-129, accompanied by:

> (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
>
> (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
>
> (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
>
> (D) A statement describing the staffing of the new operation, including the number of employees and types

of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

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.

In pertinent part, the regulations define "parent," "branch," "subsidiary," and "affiliate" as:

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

* * *

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

* * *

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.

* * *

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.

8 C.F.R. §§ 214.2(l)(1)(ii)(I), (J), (K), and (L).

The petitioner described the stock ownership of the Venezuelan and U.S. entities on Form I-129, in a November 13, 2001 letter, and, again, on appeal in the form of a notarized statement. The stock ownership percentages for the U.S entity are:

[redacted]

The stock ownership percentages for the Venezuelan entity are:

[redacted]

As the above percentages demonstrate, the petitioner's ownership structure does not comply with 8 C.F.R. § 214.2(l)(1)(ii)(L)(2); that is, the same group of individuals do not own both the Venezuelan and U.S. companies. Specifically, [redacted] and [redacted] are the U.S. entity's only owners. In contrast, two other persons in

addition to [redacted] and [redacted] own the Venezuelan company.

The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of a nonimmigrant visa petition. *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm. 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International, supra*. Thus, the director correctly determined that the petitioner had not established itself as an affiliate of the Venezuelan company.

On appeal, counsel cites *Sun Moon Star Advanced Power, Inc. v. Chappell*, 773 F.Supp. 1373 (N.D.Cal. 1990), as support for petitioner's position. *Sun Moon Star* raised the questions of whether, under 8 C.F.R. § 214.2(l)(1)(ii)(L), a corporation can qualify as an "individual" or indirect ownership may demonstrate an affiliate relationship. The question here is whether the same individuals own stock in essentially the same proportions in each entity. The AAO acknowledges that the stock owners in both entities apparently share a familial relationship; nevertheless, as previously explained, the U.S. entity has only two owners, while the Venezuelan entity has four owners. The two additional stock holders in the Venezuelan company [redacted] and [redacted] own such significant amounts of stock that, even under the broadest interpretation the regulations, an affiliate relationship does not exist here.

Finally, the petitioner cites various unpublished cases. Because the cases are unpublished, they add no precedential weight to the matters at hand. While 8 C.F.R. § 103.3(c) provides that Bureau precedent decisions are binding on all Bureau employees in the administration of the Act, unpublished decisions are not similarly binding.

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; *Transkei*, 923 F.2d at 178 (holding burden is on the petitioner to provide documentation); *Ikea*, 48 F.Supp at 24-5 (requiring the petitioner to provide adequate documentation). The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.