U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

File: WAC-04-113-53415 Office: CALIFORNIA SERVICE CENTER Date: JUL 07 2005

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]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the blanket petition for nonimmigrant workers. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal.

The petitioner filed this blanket petition seeking continuing approval of itself and all of its branches and subsidiaries as qualifying organizations for the purpose of transferring employees to the United States as L-1 nonimmigrant intracompany transferees pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of California that develops semiconductor products. The petitioner claims that it is the parent company of four wholly-owned subsidiaries, including: (1) [redacted] in Yateley, United Kingdom; (2) [redacted] in Vallauri, France; (3) [redacted] in Tokyo, Japan; and (4) [redacted] in Bangalore, India. The petitioner further states that it has five branch offices, located in Shanghai, China; Taipei, Taiwan; Seoul, Korea; New Delhi, India; and Singapore.

The director denied the blanket petition after concluding that the petitioner is not authorized to file for continuing blanket approval, since: (1) there is no record that the petitioner has obtained approval of at least 10 "L" managers, executives, or specialized knowledge professionals during the previous 12 months; (2) the petitioner does not have three or more domestic branches, subsidiaries or affiliates; (3) the petitioner's income from U.S. operations is less than $25 million; and (4) the petitioner employs a workforce of only 316 employees.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that: (1) the petitioner has three or more branches and subsidiaries, and it is not required to have at least three entities in the United States; and (2) the petitioner's U.S. income exceeds $25 million. In support of these assertions, counsel submits a brief and a letter from the petitioner's finance manager.

To establish eligibility for approval of a blanket "L" petition, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. The regulation at 8 C.F.R. § 214.2(l)(4) provides the following:

> (i) A petitioner which meets the following requirements may file a blanket petition seeking continuing approval of itself and some or all of its parent, branches, subsidiaries, and affiliates as qualifying organizations if:
>
> (A) The petitioner and each of those entities are engaged in commercial trade or services;
>
> (B) The petitioner has an office in the United States that has been doing business for one year or more;
>
> (C) The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and

(D) The petitioner and the other qualifying organizations have obtained approval of petitions for at least ten "L" managers, executives, or specialized knowledge professionals during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least $25 million; or have a United States work force of at least 1,000 employees.

The first issue in the present matter is whether the petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates as required by 8 C.F.R. § 214.2(l)(4)(i)(C).

In his decision, the director stated as a ground for denial that "[t]he petitioner does not *have three or more domestic* branches, subsidiaries or affiliates. Besides the corporate office in Fremont, California, the petitioner only shows a sales office in Dedham, Massachusetts." (Emphasis in original.)

On appeal, counsel asserts that "the regulations do not require that the branches, subsidiaries, or affiliates be domestic."

Upon review, counsel's statement of law is correct. The regulation at 8 C.F.R. § 214.2(l)(4)(i)(C) states that the petitioner must have a total of three or more domestic *and* foreign branches, subsidiaries, or affiliates. The petitioner is not required to have three or more branches, subsidiaries, or affiliates in the United States. It is sufficient that the petitioner is located in the United States, and it has four subsidiaries and five branches abroad. The director's conclusion on this issue will be withdrawn.

The second issue in the present matter is whether the petitioner has satisfied the requirements of 8 C.F.R. § 214.2(l)(4)(i)(D) by showing that it meets one of the three stated conditions: (1) the petitioner and the other qualifying organizations have obtained approval of petitions for at least ten "L" managers, executives, or specialized knowledge professionals during the previous 12 months; or (2) the petitioner has U.S. subsidiaries or affiliates with combined annual sales of at least $25 million; or (3) the petitioner has a United States work force of at least 1,000 employees.

In his decision, the director stated as a ground for denial that "[a]ccording to the petitioner's 2003 Form 10-K/A provided to the Securities and Exchange Commission, the revenue of the U.S. operations is less than $25 million. The 10-K indicates [a] U.S. income of only $14,470,000." The director also found that there is no record that the petitioner had obtained approval of at least ten "L" managers, executives, or specialized knowledge professionals during the previous 12 months and that the petitioner employs a workforce less than 1,000 employees.

On appeal, counsel states the following:

> The petitioner's U.S income in 2003 was $124,976,000.00.
>
> CIS apparently concluded that the petitioner's U.S. income was only $14,470,000.00, based upon an incorrect reading of page 9 of the petitioner's 2003 10K filing. Page 9 refers only to the location of [the] petitioner's customers. All sales to [the petitioner] are directly billed and collected by [the] petitioner's U.S. company.

Counsel submitted a letter from the petitioner's finance manager that explains that the figure of $124,976,000.00 on the petitioner's 2003 Form 10-K/A represents the total annual revenues of the U.S company. The finance manager states that:

> [T]he reference in the Form 10-K/A to $14,470,000 merely states that this portion [of] our total revenues were generated from some of our customers who were physically located in the U.S. but this is only a part of the total revenues of $124,976,000 which is fully attributable to the U.S. operations.

Upon review, counsel's assertions are persuasive. As noted by counsel, the petitioner's 2003 Form 10-K/A statement breaks down the petitioner's sales revenues by location of its customers. While only $14,470,000 of the petitioner's revenues were derived from customers located in the United States, the U.S. petitioner's total revenues for the year were $124,976,000. As one of three ways to satisfy the requirements of 8 C.F.R. § 214.2(l)(4)(i)(D), the petitioner may show that its family of companies include U.S. subsidiaries or affiliates with combined annual sales of at least $25 million. As the petitioner has shown that it is a U.S. business with gross annual revenues of $124,976,000, it has met the requirements of 8 C.F.R. § 214.2(l)(4)(i)(D). Contrary to the director's findings, the petitioner does not have the burden to show that it has sales of at least $25 million that are derived from customers located in the United States; it is sufficient that the U.S. company establishes that it's global sales total at least $25 million. 8 C.F.R. § 214.2(l)(4)(i)(D).

Because the petitioner has demonstrated that it has annual sales of more than $25 million, the petitioner has satisfied one of the three conditions set forth at 8 C.F.R. § 214.2(l)(4)(i)(D). Accordingly, the petitioner is not required to show that it has obtained approval for at least ten "L" managers, executives, or specialized knowledge professionals during the previous 12 months or that the petitioner employs a workforce at least 1,000 employees. The director's decision on this issue will also be withdrawn.

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. The petitioner has met this burden. The director's decision will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained.