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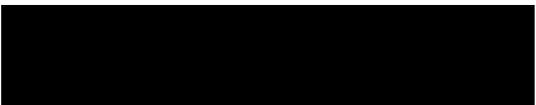
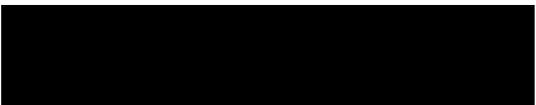
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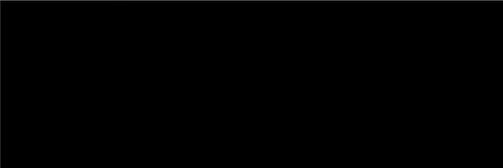
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FILE: LIN 04 020 51050 Office: NEBRASKA SERVICE CENTER Date: **JAN 25 2006**
T 99 328 899

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:


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, Nebraska Service Center, denied the employment-based petition. The matter is now before the AAO on appeal. The appeal will be dismissed.¹

The petitioner is a company organized in the State of Delaware in March 1990. It provides telecommunications and information technology services. It seeks to employ the beneficiary as its operations program manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director determined that the petitioner had not established a qualifying relationship with the beneficiary's foreign employer.

On appeal, counsel for the petitioner submits documentation and a brief.

Section 203(b) of the Act states in pertinent part:

- (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

- (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

¹ It is noted that the petitioner filed a second I-140 (LIN 06 016 51285) for the beneficiary on October 21, 2005, after the director denied this petition. The second I-140 petition was approved on November 30, 2005. If the second petition was based on the same facts and evidence as the present petition, the approval of the second petition may be subject to revocation pursuant to section 205 of the Act, 8 U.S.C. § 1155. Accordingly, the director shall review the second petition to determine whether the petitioner disclosed the first denial in Part 4 of the Form I-140 and to determine whether a notice of intent to revoke should be issued. This decision will be included in the beneficiary's A-file [REDACTED]

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. See 8 C.F.R. § 204.5(j)(5).

The exceptionally complex issue to be resolved in this proceeding is whether the petitioner has established that a qualifying relationship exists between itself and the foreign entity. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States petitioner, [REDACTED], and the beneficiary's foreign employer, [REDACTED] Ltd. (formerly [REDACTED] Ltd.), in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

Affiliate means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (B) 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.

Multinational means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United 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.

The I-140 petition was filed on October 29, 2003. The petitioner submitted a chart labeled "relevant corporate relationship" depicting the petitioner, [REDACTED] America, Inc. and a United Kingdom company, [REDACTED] as wholly-owned subsidiaries of [REDACTED] International [REDACTED] of Germany, which in turn is wholly-owned [REDACTED] publicly traded German corporation. The petitioner submitted evidence that [REDACTED] North America, Inc. was created as the result of a merger between [REDACTED] and provided incorporation documents and evidence of subsequent name changes [REDACTED]

The petitioner indicated that it currently employed the beneficiary in L-1A status and provided copies of his current and previous Form I-797 Approval Notices for all periods of L-1A classification, including an approval notice for the Blanket L petition [REDACTED] Corporation, and a copy of the Form I-129S, Nonimmigrant Petition Based on Blanket L Petition, submitted by the beneficiary to the U.S. Embassy in London on January 23, 2001. The information provided on the Form I-129S indicates that the beneficiary was employed by DaimlerChrysler UK Limited from April 1998 until January 2001, at which time he was transferred to the United States in L-1A status to work for [REDACTED] Corporation's Warrenville Support Center in Lisle, Illinois. The beneficiary's subsequent L-1A employers, as shown on the submitted Forms I-797A, were T-Systems Inc. and T-Systems USA, Inc.

On June 25, 2004, the director requested additional evidence to establish that there is a qualifying relationship between the petitioner and the beneficiary's foreign employer. Specifically, the director observed:

The evidence does not sufficiently establish a qualifying relationship between the United States and foreign entities. The Form I-129S submitted indicates that the beneficiary was employed abroad by [REDACTED] UK Limited. The petitioning entity [REDACTED] North America, Inc. You submitted no evidence to establish a relationship between the two entities. Specifically, the documentation regarding the petitioning entity indicates that it is a wholly-owned subsidiary of [REDACTED]. In regard to the foreign entity, you submitted a copy of the blanket petition for [REDACTED] Corporation which lists the foreign entity under its claimed prior name, Mercedes Benz (United Kingdom) Ltd. The blanket petition does not indicate [REDACTED] the petitioning entity are also affiliated with [REDACTED] and the documentation regarding the petitioning entity and its parent contains nothing to indicate a relationship with [REDACTED] UK Limited.

Therefore, please explain the alleged relationship between the two entities and submit *documentary evidence* to establish the qualifying corporate interrelationship between the United States business entity and the foreign business entity which employs or employed the alien. Such evidence must establish common ownership and/or control between the foreign entity and the United States entity. Evidence of a qualifying relationship may include, but is not limited to, annual reports, articles of incorporation, financial statements, and/or evidence of ownership of all outstanding stock for both entities.

(Emphasis in original.)

In a response dated September 15, 2004, counsel for the petitioner submitted a "corporate relationship" timeline which provided the following information:

[REDACTED] was a joint venture between [REDACTED] and [REDACTED]. Systemhaus is included [REDACTED] blanket petition. At the time blanket documents were prepared in 1998 the subsidiary i[n] the [United

Kingdom] at which [the beneficiary] was employed was called [REDACTED] UK later renamed [REDACTED] limited.

- 1) **January 2001:** [REDACTED] in the UK was owned by [REDACTED]. [T]he parent corporation stockholders are [REDACTED]. [The beneficiary] was transferred to debis IT Services North America, Inc. in the U.S.
- 2) **February 2001:** [REDACTED] formed using [REDACTED] is owned 50.1% by [REDACTED] and 49.9% owned by [REDACTED].
- 3) **November 28, 2001:** [REDACTED] announces rebranding as [REDACTED] in every country. Ownership remains [REDACTED] and [REDACTED].
- 4) **December 3, 2001:** debis [REDACTED] [The beneficiary's] U.S. Employer changes it name to [REDACTED]. No visa amendment for this name change.
- 5) **January 2002:** [REDACTED] announce that [REDACTED] will buy all of [REDACTED] and conclude the sale by March 2002.
- 6) **February 15, 2002 Visa amendment petition** filed with Nebraska Service Center for [the beneficiary] is filed by [REDACTED] to reflect that the company's ownership has changed and [REDACTED] will no longer be involved. L-1 relationship is preserved because the new owner of the company was an original joint venture partner and now [h]as taken over all assets to create a wholly owned subsidiary including all assets abroad.
- 7) **August 12, 2003 Visa amendment petition** filed for [the beneficiary] to reflect migration to [REDACTED] USA in the merger. L-1 relationship is preserved because the parent company remains the same[.] [C]orporate relationship is maintained.
- 8) **October 2003 [REDACTED] Inc. mergers [REDACTED] USA** another wholly owned subsidiary of [REDACTED] L-1 relationship preserved because of the common parent company. Name change also takes effect.

(Emphasis in original.)

In support of this statement, the petitioner submitted press releases confirming that (1) [REDACTED] a joint venture between [REDACTED] formed in October 2000, with the latter referred to as owning a 50.1 percent "majority stake" in the company; (2) [REDACTED] was re-named [REDACTED] in February 2001; and, (3) DaimlerChrysler subsequently sold its 49.9 percent interest [REDACTED] in January 2002. The petitioner also submitted its certificate of incorporation, with evidence of its name change from [REDACTED] North America, Inc. to [REDACTED].

The petitioner provided a corporate organizational chart that purports to show the ownership of the petitioner and the beneficiary's foreign employer. The petitioner is depicted as being an indirect, wholly-owned subsidiary [REDACTED] through its subsidiaries [REDACTED] International [REDACTED] [REDACTED] which is shown as the petitioner's direct parent company. The chart

shows [REDACTED] Ltd., the beneficiary's foreign employer, is now known as [REDACTED] and is majority owned (50.1 percent) by the same company [REDACTED]. The chart also reflects [REDACTED] once held a 49.9 percent interest [REDACTED] now known [REDACTED] but does not currently own any interest in the company.

The petitioner also provided a copy of a February 14, 2002 letter from [REDACTED] submitted with the first I-129 petition to amend the beneficiary's L-1A status (LIN 02 112 53359). [REDACTED] acknowledged [REDACTED] sold its interest in [REDACTED] but stated: "The L-1 visa is preserved as the employer abroad was also purchased by [REDACTED]." The petitioner submitted a copy of the Form I-129 Petition prepared in February 2002, which identifies the beneficiary's foreign employer as [REDACTED] Limited [REDACTED]. Finally, the petitioner submitted an October 1, 2003 letter from its general counsel advising that effective October 1, 2003, [REDACTED] USA Inc. have merged, with the resulting company renamed [REDACTED] America, Inc."

The director denied the petition on December 6, 2004, determining that the submitted evidence did not establish that debis Systemhaus owned the beneficiary's foreign employer, that the beneficiary's foreign employer was included in the "rebranding [REDACTED]" or that it was included when [REDACTED] sold its shares to [REDACTED]. The director specifically noted that the evidence did not indicate that the United States petitioner was affiliated with [REDACTED] so that it was unclear why [REDACTED] blanket petition would have been used as evidence of a qualifying relationship. The director concluded that the record did not contain evidence regarding the actual, current ownership of the beneficiary's foreign employer or evidence that a qualifying relationship exists between [REDACTED] UK Limited and [REDACTED] North America, Inc.

On appeal, counsel for the petitioner contends that the beneficiary was eligible [REDACTED] initial L-1A blanket petition because "[a]t the time of the Beneficiary's transfer the Petitioner was a joint venture between [REDACTED]." Counsel claims that the L-1A relationship was preserved even though [REDACTED] eventually held no interest in the joint venture. Counsel asserts that since a qualifying company originally petitioned for the beneficiary's transfer and that an original party to the joint venture purchased the qualifying companies both in the U.S. and abroad, the qualifying relationship is preserved, "even if the beneficiary's original [REDACTED] employer was not purchased in the buy-out event."

² On appeal, the petitioner submits evidence to show that the company currently known as "[REDACTED]s, Ltd." was previously known as "[REDACTED] (UK) Ltd.," not [REDACTED] UK Ltd. as indicated on the petitioner's corporate organizational chart. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Counsel's assertions are not persuasive. The petitioner has not established that the U.S. company and the beneficiary's foreign employer enjoyed a qualifying relationship at the time of filing this petition.² The regulation 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 this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). 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*, 19 I&N Dec. at 595.

The evidence in the record does not establish that the beneficiary's foreign employer [REDACTED] Limited, its parent company, or any of its affiliates entered into a qualifying joint venture with the petitioner's ultimate parent company [REDACTED] or any of its subsidiaries. Although the regulations contemplate a qualifying subsidiary relationship wherein an entity owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity, the record in this matter does not demonstrate that the beneficiary's foreign employer and the petitioner's ultimate owner ever had a 50-50 joint venture relationship. *See* 8 C.F.R. § 204.5(j)(2).

On appeal, the petitioner submits an excerpt from [REDACTED] Form 20-F filed with the Securities and Exchange Commission on February 20, 2003. Page eleven of this document provides the following information: "In October 2000, our subsidiary [REDACTED] Services [REDACTED] combined its information technology activities with those of [REDACTED] in a joint venture. As part of the transaction, [REDACTED] contributed 4.6 billion in cash to our information technology subsidiary [REDACTED] in exchange for a 50.1% *controlling* interest in that company." (Emphasis added.) While [REDACTED] may have regarded their ownership of [REDACTED] "joint venture," the U.S. company at the time of the beneficiary's transfer qualified only as a subsidiary of its majority owner, [REDACTED] immigration purposes. *See* 8 C.F.R. § 204.5(j)(2). The petitioner has not submitted evidence [REDACTED] with its 49.9 percent minority interest in the company and thus did not establish the necessary elements of ownership and control. Accordingly, the petitioner (then known as [REDACTED] Services North America) did not meet the definition of a subsidiary of the [REDACTED] Group pursuant to 8 C.F.R. § 214.2(l)(ii)(K) or 8 C.F.R. § 204.5(j)(2) at the time of the beneficiary's transfer to the United States under [REDACTED] Corporations' blanket L petition. The evidence in the record does not support counsel's assertion that the petitioner had a qualifying relationship with the beneficiary's foreign employer at the time of his transfer to the United States as a nonimmigrant.

Nevertheless, counsel relies heavily on the fact that the beneficiary was transferred to the United States in L-1A status under [REDACTED] Corporation's 1998 Blanket L petition as evidence of the qualifying relationship between the petitioner and the foreign entity at the time the petition was filed. Counsel's reliance

² The AAO notes for the record that the submitted evidence does not demonstrate that the petitioner and the beneficiary's foreign employer had a qualifying relationship at the time the beneficiary was transferred to the United States [REDACTED] blanket L petition in January 2001.

is misplaced, as the L-1 visa appears to have been granted in error, and it is unclear whether the petitioner provided the U.S. Embassy in London with sufficient documentation to make an informed decision regarding the petitioner's and beneficiary's eligibility. As noted by the director, the U.S. company then known as [REDACTED] North America Inc.," was not listed on the Blanket L Petition (although its indirect parent company, [REDACTED] is on the list of qualifying offices), and it is not clear that the petitioner identified [REDACTED] North America, Inc. as the beneficiary's intended U.S. employer at the time of the transfer. Rather, the Form I-129S and January 12, 2001 letter submitted to the U.S. Embassy in London indicated that the beneficiary would work for the Blanket L petitioner [REDACTED] Corporation. On appeal, counsel explains: "The blanket petition and visa refer to the company by generic names. The offer letter and subsequent I-9 caption the legal entity name." The petitioner submits a copy of a January 12, 2001 offer letter [REDACTED] North America, Inc. letterhead, signed by the beneficiary in February 2001, after his visa was issued. Based on the date of this letter, it appears that it was not submitted to the U.S. Embassy in London with the beneficiary's Blanket L-1A visa application, and thus the consular officer would have reasonably assumed that the beneficiary would be working for [REDACTED] Corporation, a qualifying affiliate of his foreign employer, in the United States.³

Moreover, even if the petitioner did properly identify the beneficiary's actual intended U.S. employer at the time he submitted his initial Blanket L-1 visa application, as discussed above, [REDACTED] and its subsidiaries were no longer qualifying organizations in January 2001 because [REDACTED] did not hold a majority or 50 percent interest in these "joint venture" companies after October 2000. Accordingly, while [REDACTED] may have been a qualifying subsidiary in December 1998 when the Blanket L petition was filed, the petitioner was required to amend its Blanket L petition after selling a majority interest in the company to [REDACTED] in October 2000. *See* 8 C.F.R. § 214.2(l)(7)(i)(C) (requiring a Blanket L petitioner to file an amended petition to reflect changes in approved relationships).

Counsel also relies on CIS's previous approval of an amended L-1A visa petition filed subsequent to the transfer of [REDACTED] 49.9 percent interest in the petitioner to [REDACTED] in January 2002 as evidence that the change in ownership does not affect the qualifying relationship for L-1 purposes or for purposes of qualifying for this visa classification. Again, counsel's reliance on this approved amendment of the beneficiary's L-1 status is misplaced. The AAO notes that the petitioner submitted misleading information in support of the beneficiary's subsequent I-129 petition. Specifically, on the L Classification Supplement to Form I-129, the petitioner identified the beneficiary's foreign employer as [REDACTED] UK Limited, now [REDACTED]" and stated in its February 14, 2002 letter "the employer abroad was also purchased by [REDACTED]. The record also contains a corporate organizational chart reflecting the same name change [REDACTED] UK Limited [REDACTED] Ltd. While there is evidence in the record to establish the existence of a United Kingdom company called [REDACTED]" it is clearly not the same company as the beneficiary's foreign employer, [REDACTED] UK Limited, which has not undergone a name change and continues to exist as a 100 percent owned subsidiary [REDACTED]. On appeal, counsel submitted evidence that the company currently known as "[REDACTED] Ltd." was previously known as [REDACTED] (UK) Limited." Doubt cast on any aspect of the petitioner's proof may, of course, lead to a

³ At his discretion, the director may request that the U.S. Embassy review the original visa application to determine whether the beneficiary misrepresented his intended U.S. employer.

reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Further, it must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427. Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity); *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications.)

Regardless, the present record contains portions of the records for two previous L-1A petitions filed on behalf of the beneficiary. In the beneficiary's first two L-1A petitions, the petitioner either misrepresented that they had complied with the qualifying relationship requirement, or the consular officer and director committed gross error in approving the petitions without sufficient evidence of a qualifying relationship between the beneficiary's foreign employer and the U.S. petitioner. Regardless, the approval of the previous petitions may be subject to revocation based on the evidence submitted with this petition. *See* 8 C.F.R. § 214.2(l)(9)(iii).

Based on the foregoing discussion, the petitioner has not provided documentary evidence demonstrating that it and the beneficiary's foreign employer shared common and controlling ownership when the beneficiary was transferred to the United States as an L-1A nonimmigrant intracompany transferee in January 2001. Rather, the evidence in the record shows that beneficiary's transfer in January 2001 was not to a qualifying entity. The petitioner has not demonstrated sufficient common ownership and control between the petitioner and the beneficiary's foreign employer to establish that a qualifying relationship existed at the time of filing this petition.

Even if the petitioner had established that the foreign entity had a qualifying relationship with the petitioner at the time the beneficiary was transferred to the United States, counsel's arguments would not be persuasive. Counsel argues: "When [REDACTED] bought the entire joint venture including the assets abroad, the L-1A relationship remains preserved even though [REDACTED] is no longer involved. The statute does not require that the qualifying relationship between companies must remain the same throughout the entire course of employment." This statement might be accurate if a [REDACTED] company in the United Kingdom had employed the beneficiary. However, the beneficiary's foreign employer, [REDACTED] UK Ltd., was not involved in the purchase "of assets abroad" and had no qualifying relationship at all with the petitioner's

predecessor company following the sale of a majority interest in [REDACTED] in October 2000.

Furthermore, counsel's reliance on the beneficiary's continuous maintenance of L-1A status, and on the regulations governing L-1 nonimmigrant intracompany transferees at 8 C.F.R. § 214.2(l) is not persuasive in the context of this immigrant visa petition. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of "subsidiary" and "affiliate." See 8 C.F.R. §§ 214.2(l)(1)(ii)(K) and (L); 8 C.F.R. § 204.5(j)(2). However, there are situations in which changes in corporate relationships will render an L-1A nonimmigrant ineligible for classification as a multinational manager or executive pursuant to section 203(b)(1)(C), even when such changes do not affect the nonimmigrant alien's ability to maintain his or her L-1A status.

The L-1 nonimmigrant classification only requires that the petitioning organization continue to operate outside the U.S. See 8 C.F.R. § 214.2(l)(ii)(G)(2) (defining "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which is or will be doing business in at least one other country for the duration of the alien's stay in the United States as an intracompany transferee.) While a qualifying relationship with the beneficiary's foreign employer must exist at the time of the beneficiary's transfer to the United States in L-1 status, a subsequent sale or dissolution of the foreign entity that employed the beneficiary will not necessarily render the beneficiary ineligible to maintain L-1 status, so long as the petitioner continues to do business in at least one other country through a qualifying branch, parent, affiliate or subsidiary. In such an instance, the regulations require the petitioner to file an amended I-129 petition so that CIS can determine whether the petitioner is still a qualifying organization. See 8 C.F.R. § 214.2(l)(7)(i)(C).

In contrast, in order to establish eligibility for classification as a multinational manager or executive for immigrant visa purposes, the petitioner must establish that it maintains a qualifying relationship with the beneficiary's foreign employer; the foreign corporation or other legal entity that employed the beneficiary must continue to exist and have a qualifying relationship with the petitioner at the time the immigrant petition is filed. 8 C.F.R. §204.5(j)(3)(i)(C). A multinational executive or manager is one who "seeks to enter the United States in order to *continue* to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive." Section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C).

Although the regulations at 8 C.F.R. § 204.5(j)(3)(i)(B) reference beneficiaries who are already employed by the petitioner as nonimmigrants, the fact that the beneficiary is currently in the United States in L-1A classification does not exempt the petitioner from its burden to establish the existence of an ongoing qualifying relationship with the beneficiary's previous foreign employer as of the date the petition is filed. Rather, the regulation at 8 C.F.R. § 204.5(j)(3)(i)(B) simply allows CIS to look beyond the three-year period immediately preceding the filing of the I-140 Petition in order to determine whether the beneficiary has the requisite one year of qualifying employment abroad. To construe the regulation as creating an exception that allows L-1A beneficiaries to qualify as multinational managers without a qualifying relationship between the U.S. and foreign entity would contravene the plain language of the statute. The petitioner must establish eligibility at the time of filing the immigrant visa petition. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In this case, the tenuous affiliate relationship between the petitioner and the beneficiary's foreign employer was severed when [REDACTED] sold all interest in [REDACTED]. The fact that the petitioner continues to be part of a multinational group is irrelevant in this proceeding, as this group does not include the foreign company that employed the beneficiary. The beneficiary's employment abroad with [REDACTED] UK Limited is not considered employment with a qualifying entity for the purposes of this immigrant visa classification, and it cannot be found that the beneficiary is seeking "to continue to render services to the same employer or to a subsidiary or affiliate thereof."

The petitioner has not established that a qualifying relationship exists between the petitioner and the beneficiary's foreign employer. For this reason, the appeal will be dismissed.

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.