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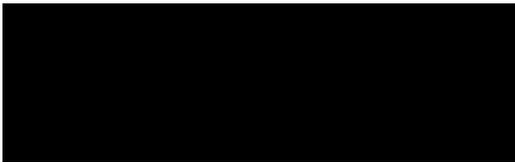
IN RE: Petitioner:

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:



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 petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be denied.

The petitioner is described as an importer and distributor of the sports caps manufactured by its Korean affiliate. It seeks authorization to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. company and the foreign company because the petitioner did not submit evidence that established the petitioner is the affiliate of the foreign company.

On appeal, counsel asserts that the petitioner is the affiliate of the foreign company and that they have a qualifying relationship under CIS regulations because the same group of individuals each own and control approximately the same share in each affiliate.

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.

The regulation at 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.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) states that if the 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 (I)(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.

At issue in this proceeding is whether a qualifying relationship exists between the petitioning company and the claimed affiliate in Korea.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the terms relating to "qualifying organization" as follows:

(G) *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.

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *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.

(L) *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.

The petitioner, [REDACTED] located in Los Angeles, California, claims to be an affiliate of [REDACTED] located in Korea. In support of this claim, the petitioner submitted for the U.S. company the following: a copy of the Articles of Incorporation, four stock certificates, and a stock transfer ledger. The stock transfer ledger and four stock certificates were issued August 1, 2001 and indicated the following shareholders and the number of shares held:

[REDACTED]	2,000 shares
[REDACTED]	2,000 shares
[REDACTED]	500 shares
[REDACTED]	500 shares

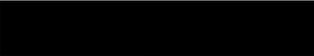
For the foreign company, the petitioner submitted a copy of a Business Registration Certificate and a list of stockholders. This list of stockholders indicated the following shareholders and the number of shares held:

[REDACTED]	2,000 shares
[REDACTED]	2,000 shares
[REDACTED]	500 shares
[REDACTED]	500 shares

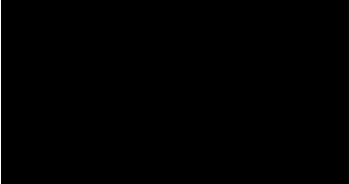
The list of stockholders, noted in the file as "Exhibit C," appears to be a translated letter prepared by the president of [REDACTED] however the letter does not contain a signature and the original foreign language document was not submitted. In addition, if the document is a translation, it is not accompanied by the translator's certification, as required by 8 C.F.R. § 103.2(b)(3). The letter states that it is based on the "original stock-holder list which is in our head office." The petitioner did not submit any primary evidence to demonstrate the actual stockholders, such as the original "stock-holder list" from the head office, stock certificates, ledgers, or the company's articles or incorporation.

Additionally, the Form I-129 described the stock ownership and managerial control of each company as "[t]he stock ownership and control in both the USA & Korean affilioate (sic) entities is the same. Therefore the ownership and control in the USA entity [REDACTED] is as follows (sic): (a) Hang Nam Chung = 40% (b) Sung-IL Lee = 40% (c) Oh-yoon Chung = 10% (d) Pan-Jin Seo = 10%."

On August 27, 2001 the director issued a request for additional evidence noting that the petitioner submitted a stock transfer ledger for the U.S. entity. Additionally, the director stated "[o]n the other hand, the Business Registration Certificate and the Certificate of VAT Taxation reveal that the entity abroad is owned solely by

 The director requested evidence to “demonstrate that both entities are owned and controlled by the same group of individuals with approximately same proportion.”

On September 13, 2001, counsel for the petitioner responded to the request for evidence. Counsel referred the director to Exhibit C of the list of documents submitted by the affiliate Korean entity. According to counsel, “Exhibit C clearly and unequivocally sets out the shareholding in the Korean entity as follows:”

	2,000 shares
	2,000 shares
	500 shares
	500 shares

Counsel further asserted that the director ignored Exhibit C and made reference to two other documents that were submitted with reference to the foreign entity. Counsel states that these documents are the Business Registration Certificate and the VAT Taxation Basis Certificate, respectively. Counsel explains “[t]he 2 above mentioned documents have absolutely nothing to do with share/stock ownership in the Korean entities they are merely documents required by the authorities for their respective registration purposes.”

Counsel submits a letter obtained from and prepared by the accountant of the Korean entity in support of the petitioner’s assertions. The letter from the Korean entity’s accountant states that the shareholders of the Korean entity are those listed above. Additionally, this letter states that the Business Registration Certificate and a Certificate of VAT Taxation Basis “do not detail all the shareholders names in a company but only state the president. Therefore [the beneficiary]’s name is the only name mentioned in the 2 documents mentioned above as she is president of [the foreign entity].”

The director denied the petition, noting:

a careful review of the evidence at Exhibit C, which includes a copy of Stock Transfer Ledger and four stock certificates showing only the ownership and control of the U.S. entity. Therefore it must be concluded that the evidence fails to support a finding that both organizations are owned and controlled by the same group of individuals who each own and control approximately the same share or proportion of each organization.

On appeal counsel repeats the assertions that were provided in the response to the director’s request for additional evidence. Counsel’s argument is persuasive. The petitioner provided the foreign entity’s stock statement that lists the same owners as the U.S. entity. Additionally, the petitioner provided a signed letter for the foreign entity’s accountant that explained that the company’s president’s name was listed on two business registration documents as an officer and not the sole owner of the company.

The AAO is in agreement with the petitioner that the director misread the foreign business registration documents. However, upon review of all of the documents provided, the AAO finds that there is insufficient evidence to demonstrate that the U.S. entity and the Korean entity have identical shareholders and thereby qualify as affiliates, as defined by 8 C.F.R. § 214.2(l)(1)(ii)(L).

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 immigrant visa classification. *Matter of Church of Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986)(in nonimmigrant visa proceedings); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982)(in nonimmigrant visa proceedings). In 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 of Scientology International*, 19 I&N Dec. at 595.

As general evidence in a nonimmigrant L-1A petition, a list of shareholders by itself is not sufficient evidence to determine the ownership and control of a corporate entity. The corporate stock certificates, stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The evidence provided by the petitioner regarding the ownership of the foreign entity is insufficient. The petitioner merely provided a document titled "list of stockholders." The petitioner did not provide a copy of the original stockholder list in its original language with a certified translation. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The petitioner did not provide copies of stock certificates, a stock transfer ledger, or evidence why these documents are unavailable.

Upon review of the record, the documents provided by the petitioner do not establish that the U.S. entity and the foreign entity are affiliates in that both organizations are owned and controlled by the same group of individuals who each own and control approximately the same share or proportion of each organization. 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). Therefore, this petition must be denied.

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.