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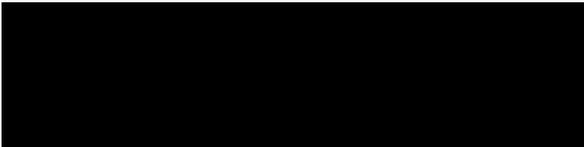


U.S. Citizenship  
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FILE: WAC 02 091 50295 Office: CALIFORNIA SERVICE CENTER Date:

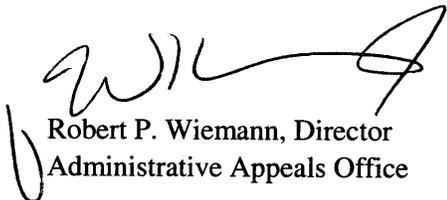
IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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]

**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 AAO will dismiss the appeal.

The petitioner is engaged in the production of films. It seeks to temporarily employ the beneficiary in the United States as its chief executive officer, and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee. The director denied the petition concluding that the petitioner had not established a qualifying relationship between the U.S. and foreign companies pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G).

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 asserts that “key evidence” including documents submitted by the petitioner in response to the director’s request for evidence, was overlooked. Counsel submits a letter in support of its assertions on appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). 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. In addition, 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.

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.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within 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 services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The issue is whether a qualifying relationship exists between the beneficiary’s foreign employer and the U.S. petitioning organization.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term “qualifying organization” and related terms 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 (I)(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 stated in the petition that the U.S. entity is a subsidiary of the beneficiary's foreign employer, and that the foreign company owned 55% of the petitioning organization. In an appended letter, counsel for the petitioner reiterated that the petitioner is a subsidiary of the beneficiary's foreign employer, as the foreign company owns 55% of the petitioner. Counsel noted that the beneficiary owns the remaining 45% of the corporation.

The director issued a request for additional evidence. As the request is part of the record, it will not be entirely repeated herein. With regard to establishing a qualifying relationship, the director requested that the petitioner provide: (1) proof of the foreign company's payment for its interest in the U.S. entity; and, (2) a copy of the petitioner's limited liability articles of incorporation, including the names of its members and the percentage of interests held by each member. The director explained that as proof of stock purchase, the

petitioner should submit copies of original wire transfers from the parent company, canceled checks, and deposit receipts clearly identifying the origin of the monies deposited. The director also stated that for funds not originating from the foreign company, the petitioner should explain the source, the source's affiliation to the foreign and U.S. companies, and the reason the funds were transferred from an outside source.

In response, the petitioner submitted a copy of the petitioner's Articles of Incorporation, and a copy of a Deutsche Bank wire transfer made on May 17, 2002 to the U.S. entity in the amount of \$29,032.40. The petitioner explained that the transfer originated from another German company, yet was made for the benefit of the beneficiary's foreign employer, and represented the foreign employer's initial investment in the petitioning organization.

In his decision, the director determined that the petitioner failed to demonstrate a parent/subsidiary or affiliate relationship between the U.S. and foreign entities. The director stated that in support of a parent/subsidiary relationship, the petitioner submitted two membership certificates, the U.S. company's Articles of Incorporation, and a wire transfer form. The director noted that the membership certificates do not indicate the percentage of ownership held by either shareholder in the U.S. corporation. Additionally, the wire transfer does not establish that the foreign company invested any capital in the petitioning organization. The director therefore determined that the evidence was insufficient to demonstrate a common ownership and control between the two corporations. The director consequently denied the petition.

On appeal, counsel asserts that CIS overlooked "key evidence" that proves the petitioning organization is a subsidiary of the beneficiary's foreign employer. Counsel rebuts the director's finding that the petitioner's membership certificates do not indicate either shareholder's percentage of ownership, and states that "[the membership certificates] never indicate what percentage of the outstanding capital of the company they represent." Counsel further explains "this is the reason why the corporate counsel of the company always issues an opinion letter in which he declares that the share certificates attached to the petition are the only share certificates which are issued and outstanding." Counsel states that the membership certificates and counsel's letter were overlooked, and that CIS "erroneously based its decision upon an allegedly missing evidence of a qualifying relationship."

Additionally, counsel asserts that, contrary to the director's finding, the wire transfer does not reflect that another company wired funds to the petitioner. Counsel includes a letter from the chief executive officer of the German company, from which the funds originated, which counsel claims confirms that the wire transfer was made on behalf of the beneficiary's foreign employer, and that the other company "only served as an intermediary."

On review, counsel's assertions are not persuasive. The regulations and case law further confirm that the key factors for establishing a qualifying relationship between the U.S. and foreign entities are ownership and control. *Matter of Siemens Medical Systems, Inc.* 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); *see also Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct and 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* at 595.

Generally, in a non-immigrant petition for an intracompany transferee, stock certificates alone are insufficient to demonstrate that a stockholder maintains ownership and control of a corporation. *Matter of Siemens Medical Systems, Inc., supra*, (a stock certificate is merely written evidence that a named person is the owner of a designated number of shares of stock in a corporation). CIS may therefore request additional evidence, including the corporate stock certificate ledger, stock certificate registry, corporate by-laws, and any documentation evidencing the means by which stock ownership was acquired. 8 C.F.R. § 214.2(l)(3)(viii) (a nonimmigrant petition shall include evidence as the director, in his or her discretion, deems necessary). 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. *Matter of Siemens Medical Systems, Inc., supra* at 365.

In the present matter, the petitioner has not submitted sufficient evidence to establish that the beneficiary's foreign employer owns and controls the U.S. entity. The petitioner submitted two stock certificates and the U.S. company's Articles of Incorporation. As noted by the director, neither the stock certificates nor the Articles of Incorporation identify the specific interests each of the two shareholders have in the U.S. company. Although one stock certificate identifies the beneficiary's foreign employer as a stockholder, it does not contain any information regarding the number of shares owned by the foreign company. 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). Additionally, counsel's assertions on appeal that membership certificates "never indicate what percentage of the outstanding capital of the company they represent," and that the foreign company owns a 55% interest in the U.S. corporation do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, the wire transfer receipt provided by the petitioner in response to the director's request does not establish that the foreign company "paid for the U.S. entity." The director specifically stated in his request for evidence that the petitioner should provide an explanation for funds originating from a source other than the beneficiary's foreign employer, including the source of the funds, its affiliation to the foreign and U.S. companies, and the reason the money was transferred from another source. In response, the petitioner stated only that the wire transfer made on May 17, 2002 represented the foreign company's initial investment in the petitioning organization, and that the company from which the funds originated acted only as an intermediary.

The petitioner's response is insufficient to support the petitioner's assertion that the beneficiary's foreign employer actually paid for a membership share in the petitioning company. There is no evidence that at the time of the petitioning organization's establishment, and the subsequent distribution of membership certificates on January 9, 2002, the beneficiary's foreign employer contributed any funds in consideration for its share of the U.S. company. While the petitioner asserts that the May 2002 transfer represented the foreign company's "initial investment," it does not explain the discrepancy in the time at which the membership certificates were executed and the "initial investment" five months later. Absent further explanation, the AAO cannot conclude that the beneficiary's foreign employer possesses ownership or control of the petitioner. Again, 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, supra*. Furthermore, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

For the foregoing reasons, the petitioner has not sufficiently demonstrated that a qualifying relationship exists between the foreign and U.S. entities.

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.