

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

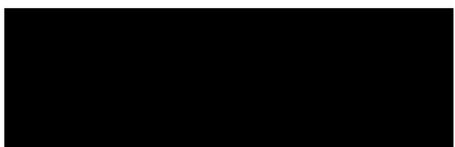
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

D7



File: WAC 04 084 51827 Office: CALIFORNIA SERVICE CENTER Date: **OCT 02 2007**

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:



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, Chief  
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 filed this nonimmigrant petition seeking to employ the beneficiary in the position of president to open a new office in the United States as an L-1A nonimmigrant intracompany transferee 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, a corporation organized under the laws of the State of California, claims to be engaged in biotechnology research and development and alleges that it is the subsidiary of Hedy Guangzhou Qixi Computer Co., Ltd. of China.

The director denied the petition concluding that the petitioner failed to establish that it has a qualifying relationship with the foreign entity. Specifically, the director determined that the petitioner did not establish that the foreign entity furnished consideration in exchange for stock ownership and that the record instead indicates that an unrelated Hong Kong company, Bipolar Company Limited, furnished the consideration.

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 to the petitioner asserts that, while the Hong Kong company did transfer money to the petitioner, this money was transferred on behalf of the foreign entity after the foreign entity first provided the funds to the Hong Kong company. Counsel further argues that the Hong Kong company is affiliated with the foreign entity because the Hong Kong company is owned and controlled by the spouse of the principal owner of the foreign entity. In support of the appeal, counsel submits a brief and additional evidence.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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.

In addition, 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, 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 (l)(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.

The primary issue in this proceeding is whether the petitioner has established that it and the organization which employed the beneficiary abroad are qualifying organizations as defined in 8 C.F.R. § 214.2(l)(1)(ii)(G).

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer. *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "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." A "subsidiary" is defined, in part, as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity."

In this matter, the petitioner asserts that the foreign entity, Hedy Guangzhou Qixi Computer Co., Ltd., owns 51.8% of its stock, thereby establishing a parent/subsidiary relationship. In support of this assertion, the petitioner submits its organizational documents and a stock certificate issuing one million shares to the foreign entity. The petitioner also submitted a letter dated January 30, 2004 in which the foreign entity's claimed acquisition of the shares is described as follows:

By acquiring [the petitioner's] majority shares, [the foreign entity] has made its initial investment of \$300,000 by wiring the said fund through its Hong Kong affiliate, Bipolar Co., Ltd. As such, the U.S. petitioner is 51.8% owned by [the foreign entity].

The petitioner also submitted (1) a wire transfer receipt from Bank of America dated August 20, 2003 indicating the petitioner's receipt of \$299,982.00 from Bipolar Company Limited; and (2) a credit statement from Bank of China dated September 1, 2003 indicating Bipolar Company Limited's receipt of \$442,440.00 from Hedy Computer Corporation Ltd. with the notation "goods" at the bottom of the document

On March 22, 2004, the director requested additional evidence. The director requested, *inter alia*, an explanation regarding why the foreign entity did not pay directly for the petitioner's shares and evidence establishing that Bipolar Company Limited is an affiliate of the foreign entity.

In response, counsel to the petitioner submitted a letter dated June 1, 2004 in which he explains the claimed relationship between the foreign entity and Bipolar Company Limited. According to counsel, the beneficiary owns a majority interest in the foreign entity and the beneficiary's spouse owns a majority interest in Bipolar Company Limited. Because of this "intimate relationship," the two companies frequently transact business with each other. While counsel repeated the claim that the foreign entity initially transferred funds to Bipolar Company Limited which, in turn, wired funds to the petitioner, counsel offers no explanation regarding why this roundabout method of acquiring the petitioner's stock was used even though the director specifically requested this explanation.

On September 10, 2004, the director denied the petition. The director concluded that the petitioner failed to establish that it has a qualifying relationship with the foreign entity. The director explained that, because the record establishes that an unaffiliated company paid for the petitioner's stock and the petitioner offered no explanation for this roundabout method of stock acquisition, it appears that the unaffiliated company actually controls the petitioner.

On appeal, counsel repeats his assertion that, while the Hong Kong company did transfer money to the petitioner, this money was transferred on behalf of the foreign entity after the foreign entity first provided the funds to Bipolar Company Limited. Furthermore, counsel again argues that Bipolar Company Limited is "affiliated" with the foreign entity because Bipolar Company Limited is owned and controlled by the spouse of the principal owner of the foreign entity. Finally, counsel, for the first time, asserts that the foreign entity purchased the petitioner's stock through Bipolar Company Limited to avoid the Chinese government's "time-consuming and bureaucratic" approval process for foreign currency transactions to foreign accounts.

Upon review, the petitioner's assertions are not persuasive.

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. As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence could include stock purchase agreements, subscription agreements, corporate bylaws, proxies, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest and ultimate control of the petitioner.

In this matter, the petitioner has not established that its stock was acquired by the foreign entity and, thus, has not established that the petitioner has a qualifying relationship with the foreign entity. The record establishes that an unaffiliated entity, Bipolar Company Limited, provided the consideration for the stock issued by the petitioner. Therefore, it appears that Bipolar Company Limited owns and controls the petitioner. Although the petitioner claims that Bipolar Company Limited is an "affiliate" of the foreign entity, the evidence in the record does not support this claim. "Affiliate" is defined in pertinent part as "[o]ne 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)(L)(2). In this matter, the foreign entity and Bipolar Company Limited are not owned and controlled by the same individual or group of individuals. The fact that the individual who allegedly owns and controls the foreign entity is married to the individual who allegedly owns and controls Bipolar Company Limited are married does not establish that these companies share ownership and control as affiliates.

Furthermore, the fact that the foreign entity supposedly provided the funds to Bipolar Company Limited for purposes of investing in the petitioner on its behalf is not persuasive. The record is devoid of evidence that Bipolar Company Limited was legally obligated to use these funds as alleged. The petitioner did not submit any promissory notes, contracts, trust agreements, or other documents establishing that Bipolar Company Limited had any duty to use this money as described. Absent evidence of some legal obligation on Bipolar Company Limited to wire these funds on behalf of the foreign entity, the petitioner's assertion is not persuasive. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, the record contains two inconsistencies that undermine the petitioner's claim that Bipolar Company Limited received funds from the foreign entity for purposes of investing in the petitioner. First, the credit statement from Bank of China, which supposedly establishes that the foreign entity transferred \$442,440.00 to Bipolar Company Limited, is dated September 1, 2003, 12 days after Bipolar Company Limited transferred \$299,982.00 to the petitioner. The petitioner, however, alleges that the foreign entity provided these funds to

Bipolar Company Limited before it wired funds on its behalf to the United States. The petitioner offers no explanation for this fundamental inconsistency in its petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Second, the credit statement from Bank of China carries the notation "goods" at the bottom of the document. Therefore, it appears that this transfer of funds from the foreign entity to Bipolar Company Limited was related to some unrelated business transaction and did not concern an investment in the United States.

Finally, counsel's assertion on appeal that the foreign entity used this roundabout method of purchasing the petitioner's stock to avoid the Chinese government's "time-consuming and bureaucratic" approval process for foreign currency transactions to foreign accounts is not persuasive. As a threshold matter, counsel may not for the first time on appeal offer this explanation. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted to address this issue, it should have addressed it in its response to the director's specific query in the Request for Evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of this explanation.

Regardless, even if the AAO did consider this explanation, it is entirely unsupported by the evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). Once 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*, 14 I&N Dec. 190.

Accordingly, the petitioner has not established that it and the organization which employed the beneficiary abroad are qualifying organizations, and the petition may not be approved for that reason.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.