U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:

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)

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, Texas 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 as an L-1A nonimmigrant intracompany transferee pursuant to § 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 Georgia that is operating as a distributor and wholesaler of imported leather goods. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer, located in Niaz Nagar, Pakistan. The petitioner now seeks to employ the beneficiary as its general manager for three years.

The director denied the petition concluding that the petitioner did not establish the following: (1) the foreign and U.S. entities possess the requisite qualifying relationship; (2) the beneficiary's foreign employer and the petitioner have been doing business in Pakistan and the United States; (3) the beneficiary has been employed abroad and would not employed in the United States in a qualifying capacity. The director further concluded that the petitioner materially misrepresented facts that "choked off a relevant line of inquiry which might have resulted in a proper determination of excludability."[1]

On appeal, counsel contends that the director erred in denying the instant petition, stating that the petitioner provided sufficient evidence establishing the following: (1) that the beneficiary's foreign employer and the petitioner are under common ownership and control; (2) that the U.S. and foreign entities are doing business in the United States and Pakistan; and (3) that the beneficiary will be engaged in the United States in a primarily managerial and executive position. Counsel also claims that the petitioner did not misrepresent any facts presented to Citizenship and Immigration Services (CIS).

Counsel requested sixty days on Form I-290B, Notice of Appeal to the Administrative Appeals Office, in which to submit a brief and evidence. Counsel subsequently submitted a brief dated January 12, 2004, approximately seven months after the June 2003 due date requested by counsel. Pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(vii), counsel may make a written request to the AAO showing good cause for the need for additional time to submit a brief. In the instant matter, because counsel did not submit a brief during the requested time and did not ask for additional time, counsel's untimely-filed brief will not be considered.

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:

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[1] The director refers to section 212(a)(19)(B) of the 1952 Immigration and Nationality Act as guidance in determining the beneficiary's misrepresentation was material.

(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 petitioner did not specifically explain on appeal the following issues raised by the director in her decision: (1) whether the beneficiary has been employed abroad and would be employed in the United States in a primarily managerial or executive capacity; and (2) whether the petitioner materially misrepresented facts presented to CIS. As the petitioner did not submit an explanation or additional evidence on appeal, the petitioner has essentially conceded that the director's findings related to these issues are correct. Therefore, the director's decision on these issues will be affirmed.

The AAO will address the issue of whether the foreign and U.S. entities are qualifying organizations as required in the Act at section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

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 (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 regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as:

> [T]he regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The AAO will first consider whether the foreign and U.S. entities meet one of the qualifying relationships defined above. The petitioner stated on the nonimmigrant petition that the U.S. business is a wholly owned subsidiary of the beneficiary's foreign employer, and makes reference in an accompanying letter to the U.S. corporation as the subsidiary of the foreign entity. In the attached documentation, however, the petitioner provided two stock certificates for the U.S. company identifying two individuals, as the owners of 65 and 35 shares of stock, respectively. The minutes from the petitioner's January 2001 meeting also indicate the division of stock ownership between these two shareholders.

In a request for evidence, dated November 22, 2002, the director asked that the petitioner submit the following information related to a qualifying relationship between the two entities: (1) the stock registers for both the foreign and U.S. entities; (2) evidence, such as wire transfers or policy memoranda, of the foreign entity's involvement in the management and control of the petitioning organization; and (3) bank statements, profit and loss statements, or audited accountant's reports that reflect financial transactions between the foreign and U.S. entities.

In a response dated February 16, 2003, counsel again provided copies of the two stock certificates issued by the petitioner, and a partnership agreement for the foreign entity naming as a 65% partner and as a 35% partner of the foreign entity. The president of the petitioning organization also submitted a letter, dated February 2, 2003, stating that documentation had been submitted reflecting wire transfers from the foreign partnership to the U.S. business during September 2002 through December 2002.

In a decision dated March 3, 2003, the director stated that the foreign entity's partnership deed and the petitioner's stock certificate "appear to show that owns 65% of both companies and owns 35% but the petition reports that the [beneficiary's foreign employer] is the parent *company*." (Emphasis in original). The director also noted confusion in references throughout the record to , the individual partner and shareholder, and the foreign company. The director stated that because CIS "cannot determine when or if the documentation refers to a sole proprietor, a partner, or a company, [CIS] cannot determine who or what owns [the] US business." The director consequently denied the petition.

In an appeal file March 28, 2003, counsel states that the petitioner provided ample evidence of the existence of a qualifying relationship between the foreign and U.S. entities. Counsel contends that both entities are under common ownership and control.

On review, the record does not support counsel's assertion. 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.

In the instant matter, the record contains several inconsistencies which prevent a finding of either a parent-subsidiary or affiliate relationship. Throughout the record, both the petitioner and counsel refer to the beneficiary's foreign employer as the "parent company." Additionally, Schedule K of the petitioner's 2001 U.S. Corporation Income Tax Return indicates that at the end of the year, an individual, partnership or corporation owned 100% of the petitioning organization. The petitioner failed to provide the Question 5 supplemental statement explaining corporate ownership. Alternatively, the petitioner submitted two stock certificates for the U.S. company reflecting ownership by two shareholders, who are also partners of the beneficiary's foreign employer. The minutes from a January 2001 meeting for the petitioning organization also reflect the same stock ownership. 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). Simply asserting on appeal that the U.S. business and "parent company" are under the same common ownership and control does not qualify as independent and objective evidence. 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). The petitioner therefore failed to establish the requisite qualifying relationship. For this reason, the appeal will be dismissed.

The AAO will next consider whether the U.S. company and the foreign entity are doing business.

In her decision, the director concluded that the petitioner was not doing business in the U.S., but rather was acting merely as an agent for the foreign business. The director stated that the petitioner was identified as a consignee on several invoices, and that by definition, the petitioner is an agent to whom merchandise is assigned. The director also stated that the petitioner's lease does not allow retail sales of merchandise, and therefore, the petitioner could not be doing business at that location.

With regard to the foreign partnership, the director noted discrepancies throughout the record in the business' location. The director also stated that the partner, was listed on tax assessment orders as an individual proprietor, but that the claimed property location "could not be assessed because the declared version of the assessee was found to be 'unverifiable'." The director concluded that invoices in the record suggest that the foreign partnership may be acting as a broker for foreign tanneries, assisting in the purchase of supplies and the sale of finished products. The director accordingly denied the petition on these two grounds.

On appeal, counsel states that the petitioner submitted evidence reflecting sales by the petitioning organization in 2001 and 2002 to be approximately $800,000 and $1,200,000, respectively. Counsel also stated that the evidence submitted shows that the foreign partnership employs over 500 employees, and has done more than $1,083,000 in exports alone.

On review, the petitioner has provided sufficient evidence demonstrating that both the U.S. and foreign entities are doing business. The record contains numerous invoices reflecting the receipt of goods from the foreign entity and the petitioner's payment for the goods. Additionally, the petitioner provided business licenses for the years 2001, 2002 and 2003, business registration, bank statements, phone bills, customs forms 7501, and proof of property insurance. Moreover, it appears the director incorrectly noted that the petitioner was a consignee of the foreign partnership. Rather, an unrelated bank, which the petitioner explains is responsible for collecting money for goods shipped from Pakistan to the United States, is identified on the invoices as the consignee. Therefore, the director's decision on this issue will be withdrawn.

The AAO will also withdraw the director's decision that the foreign partnership is not doing business. Again, the record contains sales and tax invoices, utility bills, and merchandise receipts for the beneficiary's foreign employer. The invoices also confirm that the foreign partnership is the supplier of goods to the U.S. company. The record therefore establishes that the foreign entity is doing business in Pakistan.

Based on the foregoing analysis, the director's decision is withdrawn in part and affirmed in part.

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 petition will be denied.

ORDER: The appeal is dismissed.