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

PUBLIC COPY identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 03 095 54802 Office: CALIFORNIA SERVICE CENTER Date: JUL 12 2004

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, 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 manufacturing, import, and sale of furniture. It seeks to employ the beneficiary as its product senior manager, and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee. The director denied the petition concluding the petitioner had failed to demonstrate the existence of a qualifying relationship between the foreign and U.S. entities.

On appeal, counsel states that Citizenship and Immigration Services (CIS) did not "accurately assess the petition and supporting documentation," including counsel's cover letter and the "verification letter" submitted by the petitioner's corporate counsel. Counsel asserts that the two organizations are affiliates, and submits additional documentation in support of the 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 in this proceeding is whether a qualifying relationship exists between the beneficiary's foreign employer and the U.S. 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 (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.

On the petition for a nonimmigrant visa, the petitioner stated that the U.S. and foreign organizations are affiliates. In an appended letter dated January 31, 2003, counsel stated that [redacted] owns 94% of the petitioning organization, and that "the overseas organization is 55% owned and controlled by Mr. Tsai."[1] Counsel claimed that the organizations therefore meet the regulatory definition of affiliates.

In an additional letter from the petitioner, dated January 29, 2003, the petitioner explained that "Mr. George Tsai and his sister, [redacted] 96 percent of the common stock of [the petitioning

[1] Counsel refers to the combined ownership interests of George Tsai and Christina Tsai in the U.S. entity as "Tsai."

organization]."[2] The petitioner further explained that the [redacted] is also a majority shareholder of the beneficiary's foreign employer, as [redacted] owns 55% of the foreign company's common stock. The petitioner's corporate counsel also submitted a letter, dated January 17, 2003, in which counsel outlined the following ownership of the U.S. entity: [redacted] - 42 ¼% [redacted] 51 ¾%, [redacted] - 4%, and [redacted] - 2%. The petitioner's corporate counsel also stated that the petitioning organization is authorized to issue and has issued 100,000 shares of common stock.

Counsel submitted one stock certificate for the foreign company on which "George Tsai" was named a stockholder of 3300 shares of the company's 6000 authorized shares of stock.

In a request for evidence dated February 8, 2003, the director asked that the petitioner submit evidence reflecting all shareholders of the foreign entity.

In response, counsel submitted a "stock possession certificate" issued by the foreign company indicating that "George Tsai" is a 55% shareholder of the foreign organization. Counsel claims that as a result of the submitted evidence and the evidence already in the record, the petitioner has satisfied the requirements for a nonimmigrant visa, and specifically, has established a qualifying relationship between the two entities.

In a decision dated February 27, 2003, the director outlined the ownership of the beneficiary's foreign employer and the U.S. entity, and concluded that the record does not establish that the two organizations possess an affiliate relationship. The director therefore denied the petition.

On appeal, counsel states that CIS did not accurately consider the petition and supporting evidence, including counsel's January 31, 2003 letter, or the January 17, 2003 verification letter from the petitioner's corporate counsel. Counsel notes that the ownership of the beneficiary's foreign employer and the U.S. organization is outlined in each letter, and the letters support a finding that the two entities are owned and controlled by the Tsai family.

Counsel submits an additional stock certificate and a stock possession certificate, each of which "verifies and confirms [redacted] 20% ownership of the foreign organization." Counsel contends "both entities are owned and controlled by [redacted] through majority stock ownership, 94% of [the] petitioner and 75% of the foreign affiliate organization."

Counsel also claims that the petitioner was not afforded an opportunity to clarify any misunderstanding CIS may have had regarding the documentation in the record and specifically, CIS' interpretation of the documents related to qualifying relationship.

On review, counsel's assertions are not persuasive. The regulations and case law 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

---

[2] The AAO notes that the petitioner's claim that [redacted] own a combined 96% interest in the U.S. entity is inconsistent with the percentage of ownership provided by counsel in his January 2003 letter.

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 general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate 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.,* 19 I&N Dec. at 364-365. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). 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 would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

In the present matter, the petitioner failed to provide sufficient documentation establishing common ownership and control of the beneficiary's foreign employer and the U.S. organization. With regard to ownership of the U.S company, counsel claimed in his January 2003 letter that the petitioning organization is owned 94% by the [redacted] Counsel also submitted a letter from the petitioner's corporate counsel outlining the company's four stockholders. Counsel, however, neglected to provide any documentation, such as stock certificates, the corporate stock ledger, or the stock certificate registry that would confirm the ownership and control of the petitioning organization. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Similarly, counsel submitted only limited documentation pertaining to the ownership and control of the beneficiary's foreign employer. Counsel submitted with the petition one stock certificate, which reflected stock ownership of 55% of the foreign company. When requested by the director to submit additional evidence of the foreign entity's shareholders, counsel provided a stock possession certificate, which again identified [redacted]s the owner of 55% of the corporation's stock. On appeal, counsel submits a second stock certificate and stock possession certificate naming [redacted]s the owner of 20% of the foreign company's stock. Again, the record lacks evidence establishing ownership and control of the foreign entity. In fact, counsel has only accounted for 75% of the ownership in the foreign entity, and has not explained the ownership of the remaining 25%. 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). Moreover, 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).

Additionally, even if the AAO were to acknowledge the above-outlined ownership interests in each organization, the record would not establish an affiliate relationship. Counsel asserts that four individuals own the U.S. entity, and that at least two individuals own 75% of the foreign entity. Clearly, the two entities are not "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)(emphasis added). In addition, there is no parent entity with ownership and control of both companies that would qualify the two as affiliates.

Furthermore, counsel's claim on appeal that both organizations are controlled by th[redacted] is incorrect. Counsel contends tha[redacted] who counsel explains are actually husband and wife, have a combined ownership in the U.S. and foreign entities of 94% and 75%, respectively. Counsel mistakenly asserts that the combined ownership creates a "majority stock ownership," and therefore both entities are owned and controlled by the same group of individuals. This spousal relationship does not constitute a qualifying relationship under the regulations. Counsel has not furnished any documentary evidence such as voting proxies or agreements to vote in concert that would demonstrate the two shareholders can act as one in order to create common ownership or control in both entities. For this additional reason, the record lacks sufficient documentation of an affiliate relationship.

Counsel's additional claim on appeal that the petitioner was not provided with an opportunity to clarify documents in the record has no merit. In the instant case, the petitioner is granted an automatic right to appeal the decision of the service center. *See* 8 C.F.R. § 103.3. Therefore, the petitioner is given an opportunity to establish eligibility in the appropriate forum, that being the AAO. Moreover, the director indicated in his request for evidence that the petitioner should submit evidence to "clarify" and "show" the shareholders of the foreign entity. The petitioner was therefore put on notice of inconsistencies in the record and the lack of documentary evidence.

Based on the evidence presented, the petitioner has failed to establish that it has a qualifying affiliate relationship with a foreign entity.

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.