U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

File: SRC-03-168-52076 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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 its President 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), in order to open a new office in the United States. The petitioner is a corporation organized in the State of Florida that provides commercial and residential maintenance services. The petitioner claims that it is the subsidiary of Tradeline Comercio E Representacoes, LTDA, located in Sao Paulo, Brazil.

The director denied the petition concluding that the petitioner did not show that it has a qualifying relationship with the beneficiary's foreign employer.

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, the petitioner asserts that the director did not understand the corporate relationship between it and the foreign entity, and that the two companies do have a qualifying corporate relationship. In support of these assertions, the petitioner submits a brief letter 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.

(v) 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 (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 the present matter is whether the petitioner and the beneficiary's foreign employer have a qualifying relationship.

In the initial petition filed on June 5, 2003, on Form I-129 Supplement E/L the petitioner stated that it is a wholly-owned subsidiary of the foreign entity. The petitioner further provided that the foreign entity is owned by three individuals in varying proportions. In support of these assertions, the petitioner submitted: (1) a translated document titled "Company Social Contract of Tradeline Comercio LTDA" that describes the ownership of the foreign entity; (2) a translated document titled "Instrument of Alteration and Consolidation of Social Contract" that describes changes in the ownership of the foreign entity; and (3) 1999, 2000, 2001, 2002, and 2003 translated tax documents for the foreign entity.

On or about July 11, 2003, the director requested additional evidence. Regarding the corporate relationship between the petitioner and the foreign entity, the director requested documentary evidence to establish the ownership and control of both companies. The director stated that such evidence may be in the form of stock certificates and a stock register, or copies of published annual reports which indicate affiliates and/or subsidiaries and the percent of ownership held by the parent corporation.

In a response dated September 19, 2003, the petitioner submitted: (1) an incorporation document for the petitioner; (2) the petitioner's articles of incorporation; and (3) previously submitted documents regarding the foreign entity.

On October 14, 2003, the director denied the petition. The director determined that the petitioner did not show that it has a qualifying relationship with the beneficiary's foreign employer. The director noted that CIS requested evidence of the corporate relationship between the petitioner and foreign entity, yet the petitioner failed to establish that there is a qualifying relationship. The director further highlighted a discrepancy between the number of shares purportedly issued by the foreign entity, and the number of shares purportedly owned by the individual shareholders.

On appeal, the petitioner asserts that the director did not understand the corporate relationship between it and the foreign entity, and that the two companies do have a qualifying corporate relationship. In support of these assertions, the petitioner submits: (1) a brief letter; (2) a stock certificate reflecting that the foreign entity owns 1,000 shares of the petitioner's stock; and (3) an amended Form I-129 Supplement E/L.

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 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., supra.* Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

Further, 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 stock certificates, the petitioner's stock register, or copies of published annual reports which indicate affiliates and/or subsidiaries and the percent of ownership held by the parent corporation. Additional supporting evidence would include monies, property, or other consideration furnished to the entity in exchange for stock ownership, stock

purchase agreements, subscription agreements, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

In her request for evidence, the director specifically requested that the petitioner submit evidence of the corporate relationship between it and the foreign entity such as stock certificates and a stock register, or copies of published annual reports which indicate affiliates and/or subsidiaries and the percent of ownership held by the parent corporation. In the petitioner's response, the petitioner failed to provide stock certificates, a stock register, or an annual report. The only new documents the petitioner submitted on this point were an incorporation document and the petitioner's articles of incorporation. However, on appeal the petitioner now submits a stock certificate.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). 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). 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 the stock certificate to be considered, it should have submitted the document in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the stock certificate on appeal. The appeal will be adjudicated based on the record of proceeding before the director.

The petitioner's articles of incorporation document indicates that it is authorized to issue 1,000 shares of common stock. The petitioner alleges that it is a wholly-owned subsidiary of the foreign entity, thus the petitioner claims that the foreign entity owns all outstanding shares of the petitioner's stock. However, the petitioner failed to provide any evidence to show how many shares of stock have in fact been issued, and who owns the issued shares. The record contains no documentation to show who has an ownership interest in the petitioner, beyond the petitioner's own statements. 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 evidence suggests that the foreign entity is owned in varying proportions by three individuals. However, as the record does not establish who has an ownership interest in the petitioner, the AAO is unable to assess whether the petitioner and the foreign entity possess a qualifying relationship as affiliates through common ownership and control. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L).

Based on the foregoing, the petitioner has not established that it has a qualifying relationship with the foreign entity as defined in the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G). For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not shown 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 as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In her request for evidence, the director requested

evidence of the funding or capitalization of the petitioner, such as copies of wire transfers showing transfers of funds from the foreign entity, evidence of financial resources committed by the foreign company, copies of bank statements for the checking and savings accounts, profit and loss statements or other accountants' reports. In response, the petitioner submitted an internal document titled "Evidence of funding or capitalization of the United States Company," which appears to show a monthly breakdown of dollar amount attributed to "Rosely" and "Rosely & Antonio." The document does not clearly explain whether these figures represent funds transferred to the petitioner from these individuals. Further, as the document was created internally by the petitioner, it has little independent evidentiary value and does not serve as conclusive evidence of resources available to the petitioner. The petitioner submitted bank account statements for two individual accounts, one held under the name "Rosely Alcantara" and one jointly held under the names "Rosely Alcantara" and "Antonio Jose Nunes." As these accounts are held by individuals, and the statements in no way identify the petitioner as entitled to the funds therein, the bank statements do not serve as evidence of the foreign entity's capitalization of the petitioner. Thus, the petitioner has not established that it has been adequately funded. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*). For this additional reason, the appeal will be dismissed.

Also beyond the decision of the director, the petitioner has not established that the beneficiary was employed abroad in a primarily managerial or executive capacity as required by the regulation at 8 C.F.R. § 214.2(l)(3)(iv). In response to the director's request for evidence, the petitioner submitted a description of the beneficiary's duties with the foreign entity. The beneficiary's duties include numerous non-qualifying tasks, such as paying bills, preparing mailings and advertising, telemarketing, providing travel agency services to customers over the telephone, and booking travel arrangements with carriers. While the petitioner claims that the beneficiary spent 50 percent of her time as a manager and 50 percent of her time performing sales and marketing tasks, the job description suggests that the majority of her time was invested in providing the foreign entity's travel agency services. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Further, despite the director's request, the petitioner failed to submit the foreign entity's payroll records for 2001 and 2002. Thus, the petitioner's claim that the beneficiary supervised two subordinates abroad has not been substantiated. 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 (Reg. Comm. 1972). Accordingly, the petitioner has not established that the beneficiary was employed with the foreign entity in a primarily managerial or executive capacity. For this additional reason, the appeal will be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

In visa 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.