identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

D7

[redacted]

FILE: WAC 03 178 52287 Office: CALIFORNIA SERVICE CENTER Date: JUN 09 2005

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 nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

According to the documentary evidence contained in the record, the petitioner was incorporated in 2003 and claims to be an import, export, wholesale, and retail clothing business. The petitioner claims to be a subsidiary of LaLa Plan International Hong Kong. The petitioner seeks to employ the beneficiary temporarily in the United States as vice president of its new office for a period of three years, at a yearly salary of $100,000.00. The director determined that the petitioner had failed to submit sufficient evidence to establish that a qualifying relationship exists between the U.S. and foreign entities.

On appeal, counsel asserts that sufficient evidence has been submitted to establish the existence of a qualifying relationship between the U.S. and foreign entities.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization, and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer, or a subsidiary or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

> *Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the Unite States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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 (1)(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 with 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 serves in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(1)(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 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 issue to be addressed in this proceeding is whether a qualifying relationship exists between the U.S. and foreign entities.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

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.

The regulations at 8 C.F.R. §§ 214.2(l)(1)(ii) define, in pertinent part, "parent," "branch," "subsidiary," and "affiliate" as:

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operation 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.

In the instant matter, the petitioner claims to be a subsidiary of the foreign entity. The petitioner submitted copies of the U.S. entity's Articles of Incorporation, stock certificates, stock ledger, statement of information, notice of transaction, bank statement, wire transfer confirmation, and minutes from the U.S. entity's board meeting. The petitioner also submitted copies of the Japanese entity's shareholder information and the [redacted] company registry, tax return, and Business Registration Certificate.

The stock distribution for the U.S. and foreign entities read as follows:

U.S. ENTITY

Shareholders	% of Shares
Takeki Komatsu	56%
Michiyo Komatsu	9%
Taihei Komatsu	7%
Mikio Komatsu	7%
Daisaku Komatsu	7%
Kiyoko Komatsu	14%

FOREIGN ENTITY

Shareholders	% of Shares
Takeki Komatsu	35%
Michiyo Komatsu	10%
Taihei Komatsu	10%
Mikio Komatsu	10%
Diasaku Komatsu	10%
Kiyoko Komatsu	20%
Naomi Kawanishi	5%

The director denied the petition stating that the evidence was insufficient to demonstrate that a parent-subsidiary or affiliate relationship existed between the U.S. and foreign entities. The director noted that seven (7) individuals owned the U.S. entity, while six (6) individuals owned the foreign entity. The director stated that the stock records failed to support a finding that both organizations were owned and controlled by the same parent, or individual, or by an identical group of individuals who each owned and controlled approximately the same share or portion of each organization. The director also noted that the evidence failed to show that an individual, or identical group of individuals had effective de jure or de facto control over both entities. The director further noted that no voting proxies or other agreements had been made a part of the record demonstrating that a degree of control over both entities had been relinquished by any one shareholder, in favor of a mutual shareholder. The director concluded by stating that common control of the two entities must be evident even though significant commonality of ownership may be demonstrated.

On appeal, counsel disagrees with the director's decision and asserts that [redacted] his wife, and his three sons own the Japanese company. Counsel also contends [redacted] and his family also own 86 percent of the U.S. entity and 75 percent of the Hong Kong company. Counsel further contends that with the shares held by [redacted] 95 percent of the U.S. entity is owned by the Hong Kong parent company or by the same group of individuals. Counsel further asserts:

> The same group of individuals (although family members) own 95% of the U.S. subsidiary, and even in the strictest sense, the same group of individuals with the same proportion of the shares holding as the parent company share, own 62.5%, which is more than 51%, of the U.S. subsidiary. Therefore, it satisfies the requirement to be considered as an "affiliate" . . . .

Counsel contends that although [redacted] controls the foreign and U.S. entities, by "objective observation" one could also find that the parent company owns more than half of and controls the U.S. entity. Counsel further contends that the record demonstrates the U.S. and foreign entities are owned and controlled by the same parent or group of individuals.

The petitioner has not submitted sufficient evidence to establish that a qualifying relationship exists between the U.S. and foreign entities. The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between U.S. and foreign entities for purposes of a nonimmigrant visa petition. *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm. 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988) (in immigrant visa proceedings). 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, supra.*

Evidence of record fails to demonstrate that the U.S. entity owns, directly or indirectly, more than half of the foreign entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity. The evidence shows that seven individuals own shares in the U.S. entity's stock while only six individuals own stock in the foreign entity. Although counsel claims that the petitioning company and the overseas company are majority owned by [redacted] wife, and his three sons due to the familial relationship, this familial relationship does not constitute a qualifying relationship under the regulations. *Matter of Hughes, supra.*

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.