U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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DATE: NOV 28 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

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:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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 classify the beneficiary as a 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, established on December 22, 2010 in the State of California, is a real estate leasing, management, and development company. It claims to be a branch office of [redacted], located in Zhengzhou, China. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States for a period of three years.[1]

The director denied the petition on December 5, 2011, finding that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer, [redacted]

The petitioner subsequently filed an appeal on January 3, 2012. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner submits a brief and new evidence purporting to establish that it has a qualifying relationship with Jiao Zuo Jiuwanli Real Estate Development Co., Ltd.

I. The Law

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.

[1] Pursuant to 8 C.F.R. § 214.2(l)(7)(i)(A)(2), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

(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 regulation at 8 C.F.R. § 214.2(l)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or 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 involves 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 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[.]

* * *

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

* * *

(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.

II. The Issue on Appeal

The sole issue addressed by the director is whether the petitioner established that it has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it is a branch office of the beneficiary's foreign employer, [redacted] ("the foreign entity").[2] The petitioner indicated that the foreign entity owns 80% of its shares, while [redacted] owns 15% of its shares, and the beneficiary owns 5% of its shares.

With the initial petition, the petitioner submitted the following evidence relating to the establishment of the U.S. company:

1. Shareholder's Resolution from the foreign entity, dated December 9, 2012, resolving to set up the petitioner as a branch company in California, with initial funding capital of USD $500,000;

[2] Although the petitioner claims it is a branch office of the foreign entity, it appears the petitioner is attempting to qualify as a subsidiary of the foreign entity based upon the foreign entity's majority ownership of its shares.

2. Declaration of Common Stock Issuance by the petitioner, dated March 16, 2011, declaring the issuance of stock as follows: 75 shares representing 5% ownership to [redacted] 1200 shares representing 80% ownership to the foreign entity; and 225 shares representing 15% ownership to [redacted]
3. Stock certificate number 1, issued by the petitioner on March 16, 2011 to [redacted] for 75 shares equal to 5% ownership;
4. Stock certificate number 3, issued by the petitioner on March 16, 2011 to the foreign entity for 1200 shares equal to 80% ownership;
5. Stock certificate number 2, issued by the petitioner on March 16, 2011 to [redacted] for 225 shares equal to 15% ownership; and
6. The petitioner's Articles of Incorporation, dated December 22, 2010, reflecting that the total number of authorized shares is 1500 with no par value.

The director issued a request for additional evidence ("RFE") on September 12, 2011, in which she requested, *inter alia,* additional evidence to establish that the U.S. and foreign entities have a qualifying relationship. Specifically, the director requested evidence to show that the foreign entity provided the initial capital contribution to the petitioner, including copies of the original wire transfers, copies of cancelled checks, deposit receipts, or bank statements originating in the United States detailing monetary amounts for the capital contribution. The director specifically advised the petitioner: "For all funds not originating with [the foreign entity, the beneficiary] or [redacted], explain the source and reason for receiving such funds, and provide the names of all account holders depositing these funds, and their affiliation to both the petitioner and the foreign entity."

The petitioner's response to the RFE included a letter dated October 11, 2011, explaining that because of China's foreign exchange laws and regulations, the petitioner "used its subsidiary company- [redacted] as [an] intermediary" in order to make the wire transfer to the petitioner. The petitioner stated that the $500,000 wire transfer from [redacted] on April 27, 2011 was made at the foreign entity's request, as well as the other $120,000 transfer on August 2011.

The petitioner submitted a letter from [redacted] dated September 21, 2011, confirming that it made the wire transfers on April 27, 2011 and August 2, 2011 at the request of the foreign entity, which it characterized as "our holding company." The letter further verified that [redacted] is a company registered in Hong Kong SAR, and that it was "acquired and owned by [the foreign entity] since February 2010."

The petitioner submitted a letter dated April 22, 2011 from the foreign entity to [redacted] directing [redacted] to wire USD $500,000 to the petitioner as "Initial Capital contribution." The petitioner submitted another letter dated July 25, 2011 from the foreign entity to [redacted] directing [redacted] to wire another USD $120,000 to the petitioner. The petitioner also submitted two wire transfer receipts confirming the above wire transfers from [redacted] to the petitioner.

The director denied the petition on December 5, 2011, concluding that the petitioner failed to establish that the U.S. and foreign entities have a qualifying relationship. The director acknowledged that the petitioner established that [redacted] provided capital contributions to the petitioner. The director, however,

concluded that the petitioner failed to establish that the foreign entity is in fact the holding company or parent company of [redacted] Furthermore, the director concluded that the petitioner's claims regarding Chinese laws and regulations are not supported by any evidence.

On appeal, the petitioner submits a brief asserting that "Chinese foreign exchange laws/regulations generally prevents foreign currency to be held by domestic business entity, foreign currency need to be sold to State Administration of Foreign Exchange (SAFE) approved financial institution." The petitioner asserts that "Therefore to make capital contribution to [the petitioner], [the foreign entity] have no choice but requested its wholly owned subsidiary company – [redacted] to fulfill the capital contribution to [the petitioner]." The petitioner further asserts that on December 13, 2011, the beneficiary, [redacted] wire transferred USD $18,300 from Bank China and USD $31,700 from Industrial and Commercial Bank of China, for a total capital contribution of USD $50,000 to the petitioner.

The petitioner submits the following new evidence on appeal:

1. Agreement for Purchase and Sale of Company, entered into on January 19, 2010 between [redacted] ("seller") and the foreign entity ("purchaser");
2. Print-out dated January 14, 1997 entitled "Regulations on the Foreign Exchange System of the People's Republic of China" from the People's Republic of China;
3. Bank of China wire transfer receipt reflecting that [redacted] remitted USD $18,300 to the petitioner; and
4. Industrial and Commercial Bank of China wire transfer receipt reflecting a remittance of USD $31,700 to the petitioner on December 13, 2011.

Upon review, the AAO concurs with the director's determination that the petitioner failed to establish the qualifying relationship between the U.S. and foreign entities. The petitioner failed to submit credible, reliable evidence establishing that [redacted] is a wholly owned subsidiary of the foreign entity.

The purchase agreement submitted on appeal is not credible. First, the agreement states that the closing of the sale and purchase of the business "shall take place" on or before January 31, 2010. In contrast, the letter from [redacted], dated September 21, 2011, states that it was acquired by the foreign entity in February 2010. Second, the purchase agreement makes reference to "UCC financial statements." However, the UCC (the Uniform Commercial Code) is only used in the United States; it is not apparent why the purchase agreement makes reference to United States domestic law, when the purchase agreement is between a company registered in Hong Kong and a company registered in the People's Republic of China, with the closing taking place in Hong Kong. Notably, the petitioner did not submit a copy of the agreement in the Chinese language, despite the fact that the correspondence letters between the foreign entity and [redacted] were written in both the English and Chinese languages. For these two reasons, the AAO finds that the purchase agreement is not credible.

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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*, at 591.

The petitioner submitted no objective, credible evidence establishing that [redacted]s a wholly owned subsidiary of the foreign entity. The petitioner submitted no corporate documents from [redacted] reflecting its current ownership structure, such as [redacted]s stock certificates, stock certificate ledger or registry, or the relevant minutes of the shareholder or member meeting(s) approving the sale of the business to the foreign entity. The letters by the foreign entity and [redacted] attesting to their parent-subsidiary relationship do not constitute objective, primary evidence of ownership, and alone, are insufficient to prove the claimed relationship.

While the petitioner submitted evidence showing that the beneficiary wired USD $18,300 to the petitioner on or about December 13, 2011, the petitioner failed to explain how the beneficiary's capital contribution to the petitioner – made almost one year after the petitioner was formed and one week after the denial of the instant petition- establishes a qualifying relationship between the petitioner and the foreign entity.

Finally, the petitioner claims the beneficiary wired another $50,000 to the petitioner through the Industrial and Commercial Bank of China on December 13, 2011. Again, the petitioner failed to explain how the beneficiary's claimed capital contribution to the petitioner establishes a qualifying relationship between the petitioner and the foreign entity. Notwithstanding, the wire transfer receipt the petitioner submitted as purported evidence of the beneficiary's $50,000 remittance shows someone else other than the beneficiary as the remitter.

Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Id.* at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*, at 591.

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.

Here, the petitioner failed to document one of the essential elements of the foreign entity's claimed ownership of the U.S. company, and the record contains unsupported and inconsistent claims about when, how or whether the foreign entity ever paid for such ownership interest. For these reasons, the AAO will affirm the director's decision and dismiss the appeal.

The petition will be denied and the appeal dismissed for the above stated reasons. 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.

ORDER: The appeal is dismissed.