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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 0 3 2013 Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
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:

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 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). The petitioner, an Ethiopian entity, states it is the parent of [redacted] a Nevada limited liability company established in December 2011. The petitioner indicates that the U.S. company will operate as a destination management company. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States.

The director denied the petition concluding that the petitioner failed to establish that it has a qualifying parent/subsidiary relationship with the foreign entity.

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, counsel for the petitioner asserts that "a qualifying relationship exists between [the foreign entity] and [the U.S. company] . . . pursuant to resolution and capital contribution of the parent company." Counsel for the petitioner submits a brief and additional evidence on appeal.

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.

(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) further provides 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 of 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.

II. ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner submitted sufficient evidence to demonstrate a qualifying parent/subsidiary relationship with 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.

(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.

(*3*) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on July 25, 2012. In its business plan, the petitioner states the following about its capital investment:

> Total start-up capital requirement is approximately $150,000. Start-up funding capital will be secured from [the foreign entity].
>
> * * *
>
> The parent company [the foreign entity] in Ethiopia will sustain all financial requirements and capital investment for the successful operation of our newly established subsidiary [the U.S. company]. Once the company reach is [*sic*] full potential and can sustain its own operational expenses our parent company will be able to cash out on their investment.

The petitioner submitted an "Operating Agreement" indicating that the foreign entity in Ethiopia owns 60% interest in the U.S. company, the beneficiary owns 20% interest in the U.S. company, and the beneficiary's spouse owns the remaining 20% interest in the U.S. company.

The petitioner submitted a [redacted] bank statement dated July 18, 2012 indicating that there were three credits currently "processing" to an account in the U.S. company's name resulting in an ending balance of $150,000.00. The three credits were: (1) a "teller transaction credit on 7/18" for $32.28; (2) a "teller transaction credit on 7/18" for $3,438.00; and (3) a "transfer from acct [redacted] on 7/18 via call agent" for $146,529.72.

The director sent the petitioner a request for evidence (RFE) demonstrating an existing qualifying relationship to the foreign entity. The director requested that the petitioner submit additional evidence to establish the size of the U.S. investment and the financial ability of the owner to remunerate the beneficiary and commence doing business in the United States.

In response to the RFE, counsel for the petitioner states the following in reference to the foreign entity's capital contribution to the U.S. company:

> Copies of [the foreign entity] ("the parent company") collection invoice due for payment by [redacted] The $150,000 payment made by [redacted] to [the foreign entity's] product and services as agreed in the Product Agreement was transferred and wired to the [U.S. company's] [redacted] corporate account using SEIFT CODE: [redacted] The transferred invoice amount is the origin of capital funding contribution made by [the foreign entity] ("the parent company") to United States subsidiary, [the U.S. company] in exchange for 60% majority of ownership share of the company.

The petitioner submitted 12 invoices from the foreign entity to [redacted], dated from January 27, 2012 through June 26, 2012. The cover sheet for the invoices states:

> Please transfer the invoice amount to the account below[:]
>
> Account holder name:
> Account Number: [redacted]

Swift code:
Name of the Bank: [redacted]

The petitioner submitted a bank statement from [redacted] showing that the U.S. company's account had a beginning balance of $146,641.00 on August 1, 2012 and an ending balance of $145,791.00 on August 31, 2012.

The petitioner submitted a document dated December 28, 2011, titled "Resolutions Adopted by the Members of [redacted] which states in part:

> RESOLVED, that [the U.S. company] may accept a capital contribution from [the foreign entity], a parent company based in Addis Ababa, Ethiopia, both in the present and at any time in the future on as-needed basis, with an initial capital contribution in the amount of $150,000.00 (US dollars).
>
> RESOLVED, that the Members hereby adopt and affirm the initial appointment of the members and their respective capital contributions by the Incorporators, with this initial list being as follows:

	Interest	Capital Contribution
[redacted]	20%	Industrial partner
[redacted]	20%	Industrial partner
[redacted], a foreign company based in Addis Ababa, Ethiopia	60%	$150,000.00 (USD $)

> RESOLVED, that [the U.S. company] is linked as a subsidiary company of [the foreign entity], its parent company, which is based in Addis Ababa, Ethiopia.

The petitioner submitted three member certificates dated December 28, 2011, indicating that the foreign entity owns 60 units of the U.S. company, [redacted] owns 20 units of the U.S. company, and [redacted] the beneficiary, owns 20 units of the U.S. company.

The director denied the petition concluding that the petitioner failed to establish that it has a qualifying parent/subsidiary relationship with the foreign entity. In denying the petition, the director observed that the petitioner submitted a bank statement indicating that a wire transfer of $146,592.72 was being processed on an unspecified date and from an unidentified origin. The director found that the evidence submitted was insufficient to determine that the foreign entity has contributed capital in exchange for the majority ownership of the U.S. company.

On appeal, counsel for the petitioner states:

. . . it appears that a large portion of the USCIS' concern is that it currently cannot ascertain where the $146,592.72 was transferred from - presently, it appears that USCIS cannot determine (a) where this sum originates from, i.e. source of funds; or (b) what is the purpose for which the funds are to be used. Petitioner would like to point out that the German company known as '[redacted] is very reputable tour company and an industry leader in Germany. [redacted] solicits over 5 million tour clients worldwide each year. Pursuant to a Product Agreement, [redacted] seeks and promotes tour clients on behalf of [the foreign entity]. Once these tour clients are located, [redacted] sells tour packages and collects the proceeds on behalf of [the foreign entity]. Thereafter, they transfer these monies held in trust as directed by [the foreign entity] pursuant to contractual agreement. These monies are always deemed to be an entrusted asset of [the foreign entity] pursuant to agreement and standards of conduct between the two entities. This relationship is customary in the tour industry.

* * *

Exhibit I [Company Resolution dated October 15, 2011], clearly demonstrates the following – (a) that it authorizes [redacted] to start up a new subsidiary company based in the United States, (b) that [the foreign entity] shall always maintain majority ownership in the United States corporate entity that is to be formed, (c) that [the foreign entity] authorizes the transfer of up to $200,000.00, with at least $150,000.00 associated directly with [the foreign entity's] 60% ownership and/or capital contribution in the United States business entity, with these funds originating either directly from [the foreign entity] or from any other source that holds funds on behalf of [the foreign entity], and (d) that the money actually transferred may be delivered or transferred to [redacted] and/or [redacted], individually, to hold in escrow until the United States corporate entity can be lawfully created and bank accounts established in the name of the new United states [*sic*] corporate entity.

* * *

First, German tourists pay money to [redacted] who collects these monies on behalf of [the foreign entity]. Then, pursuant to the resolution shown in Exhibit "I," [the foreign entity] forwarded the money to [redacted] individually. Finally, [redacted] placed these funds into the U.S. corporate subsidiary's bank account. . . . [redacted] was required to do this, as he merely acted as an escrow agent on behalf of the parent company in Ethiopia.

The petitioner submits a document dated October 15, 2011, titled "Resolutions Adopted by the Owners of [redacted]" which states in part:

2. [The foreign entity] shall always be the parent company of the new subsidiary company in the United States of America, and shall always maintain majority ownership of the new subsidiary company in the United States of America.

3. [The foreign entity] authorizes any of its contractors or contracting agents, including but not limited to . . . [redacted] of Germany . . . to transfer an amount up to $200,000.00 to the new subsidiary company in the United States of America from funds that they have collected on behalf of [the foreign entity], with at least $150,000.00 of these funds to be associated directly with [the foreign entity's] majority ownership in the new subsidiary company in the United States of America.

4. [The foreign entity] authorizes that the transfer of any monies for the new subsidiary company in the United States of America may be transferred to either [redacted] or [redacted] with the holder of said funds to hold until bank accounts for the new subsidiary company in the United States of America are created, at which time, said monies shall be deposited in the bank accounts for the new subsidiary company.

The petitioner submits wire transfer statements indicating that [redacted] account, [redacted], was credited $138,788.00 on July 11, 2012, $32,295.00 on July 13, 2012, and $9,394.00 on July 23, 2012.

Upon review, the AAO finds that the evidence presented by counsel and the petitioner is insufficient to establish that the U.S. company has a qualifying parent/subsidiary relationship with the foreign entity.

According to the U.S. company's business plan, it requires $150,000 in start-up capital, which is to be provided by the parent company, the foreign entity. The petitioner indicates that the third party, [redacted] provided the required funds on behalf of the parent company. The parent company authorized [redacted] to receive the funds as an individual and later transfer the funds to the U.S. company's bank account; however, the chain of custody of said start-up funds is inconsistent with the petitioner's claims. Here, the petitioner claims that [redacted] wired the money to [redacted] individual account, [redacted] and [redacted] transferred the money to the U.S. company's account. The U.S. company's bank statement indicates that there were two "teller transaction credits on 7/18," totaling $3,470.28, and one "transfer from acct [redacted] on 7/18 via call agent" for $146,529.72. Although the petitioner claims that the funds were transferred from [redacted] account, the U.S. company's bank statement reflects that the credit was made from "acct [redacted]" numbers which cannot be associated with [redacted] account. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The AAO cannot determine whether the claimed parent company has made any capital contributions to the U.S. company, thus the petitioner's claim that the foreign entity has a parent/subsidiary relationship with the U.S. company has not been established. 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). Accordingly, the appeal will be dismissed.

III. CONCLUSION

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.