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

(b)(6)

DATE: FEB 0 8 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 extend the beneficiary's employment 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, a California corporation established on December 15, 2009 under the name , is an architectural firm. It claims to be a branch office of ("the foreign entity").[1] The petitioner seeks to employ the beneficiary in the position of Creative Director/Principal in Charge of its new office in the United States for a period of two years.[2]

The director denied the petition, concluding that the petitioner failed to establish that it has a qualifying 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. On appeal, counsel asserts that the petitioner submitted sufficient evidence to establish the required qualifying relationship, specifically, that it submitted sufficient evidence that the foreign entity capitalized the U.S. entity.

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.

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[1] Assuming all facts are true, it appears the petitioner is better defined as subsidiary, rather than a branch office, of .

[2] 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.

(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) 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 to be addressed 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).

Facts and Procedural History

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it a branch office of the foreign entity, based upon the foreign entity's 100% ownership of the petitioner.[3]

In a letter accompanying the initial petition, the petitioner stated:

[3] *See supra* footnote 1.

> will be a subsidiary of [the foreign entity] located in California. On January 27, 2010, . was incorporated in the State of California, which is the holding company for .[4] (A copy of the Articles of Incorporation and EIN information are enclosed as Exhibit #4) The Articles of Incorporation are currently being amended so that the name of the company is changed to [*sic*].

Regarding the establishment of the U.S. entity, the petitioner submitted the following initial documents:

1. Articles of Incorporation for filed with the State of California on December 15, 2009;
2. Internal Revenue Service (IRS) print-out assigning to the EIN number of
3. The petitioner's Executive Summary which states, in pertinent part, the following: will be created as a California corporation based in San Diego County, California. It will be owned by its principal investor and operator, [the beneficiary]"; and
4. Account summary for bank account (account number ...) at dated February 13, 2012.

The director issued a request for additional evidence ("RFE"), 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: (1) Articles of Incorporation, including all amendments; (2) minutes of the meeting for the U.S. entity that lists the stock shareholders, the number and percentage of shares owned, and par value; (3) the U.S. entity's stock certificates; (4) the U.S. entity's stock ledger; (5) proof of stock purchase, i.e., evidence to show that the foreign entity paid for its shares in the U.S. entity; and (6) proof of capital contribution, i.e., evidence that the foreign entity provided the initial capital contribution to the U.S. entity.

Regarding the proof of stock purchase and capital contribution, the director specifically advised the petitioner that the evidence should include bank-certified copies of the original wire transfers from the foreign company, and include bank-certified copies of cancelled checks, deposit receipts, etc., detailing monetary amounts for the stock purchase. The director also advised the petitioner to provide the account holder names and affiliation to the foreign entity for all persons making the purchase/contribution and the bank accounts that were used. Furthermore, the director advised that for all funds not originating with the foreign company, explain the source and reason for receiving such funds, provide the names of all account holders depositing these funds, and their affiliation to the foreign and U.S. entities.

In response to the RFE, counsel for the petitioner explained that "proof of stock purchase does not exist because is a brand new company [*sic*]." Counsel provided the following explanation regarding the proof of the foreign entity's capital contributions:

> On February 13, 2012, . received a loan for the initial payment of $25,000 from to make the initial investment, until the money could be transferred from

[4] The January 27, 2010 date stated in the letter is inaccurate. The petitioner submitted its Articles of Incorporation, discussed *infra,* confirming that was incorporated in California on December 15, 2009.

[the foreign entity]. is also known as . [The foreign entity] was unable to wire the investment to the United States and therefore the [beneficiary's] husband, paid forward the amount based on [the foreign entity's] contract to reimburse him the $35,000. On February 27, 2012, wired $35,000 from his account to) for repayment of the loan from On March 2, 2012, wired $35,000 to for repayment of the loan. On May 11, 2012, according to the agreement between [the foreign entity] and Russian Ruble 1,067,184.69 (or $35,000 at that time) was wire to him to reimburse the $35,000 he wired to , and the equity investment was clearly that of the parent company, [the foreign entity] [*sic*].

The petitioner submitted, *inter alia*, the following documents in response to the RFE:

1. The petitioner's Certificate of Payment of Business Tax from the City of San Diego;
2. Letter dated June 5, 2012 from the petitioner to the IRS advising the IRS of the petitioner's change of name from . The letter confirmed the petitioner's taxpayer identification number as
3. The petitioner's Certificate of Amendment of Articles of Incorporation, filed on February 13, 2012 with the State of California, amending the name of the corporation from . and certifying the total number of outstanding shares of the corporation as 100;
4. Stock certificate number 1 issued by the petitioner to the foreign entity for 100 shares on March 30th (no year specified);
5. The petitioner's stock transfer ledger reflecting that the foreign entity became the owner of 100 shares on April 1, 2012;
6. Loan Contract, dated February 1, 2012, between ("borrower") and ("lender"), in which the lender agreed to loan $25,000 on February 13, 2012 to be used as "start-up capital contribution" and the borrower agreed to repay the loan in full on or before April 30, 2012;
7. Image of check for $25,000 on February 13, 2012;
8. Image of check for $35,000 on February 27, 2012;
9. Transfer details reflecting that the petitioner (account ending …4079) transferred $25,000 to) on March 2, 2012;
10. Certificate of Marriage between the beneficiary and
11. Agreement No. 4-2012 dated February 10, 2012 between ("Party-1") and the foreign entity ("Party-2"), in which Party-1 agreed to transfer $35,000 to Party-2 "by transferring monetary funds from the account of Party-1 to the current account of Party-2." This agreement states, in pertinent part, that the agreement was made because the foreign entity "hereby intends to set up a subsidiary company in the USA, California – and that this agreement "is necessary to transfer funds to the bank account in the USA to outfit the subsidiary company's office space and employ personnel";
12. Bank order reflecting the foreign entity paid 1,067,000 rubles and 69 kopecks on May 11, 2012; and

13. "Action of the Members and Managers of [redacted] Taken by Written Consent in Lieu of a Meeting," dated April 23, 2012, in which the members of the petitioner consented to and ratified, *inter alia,* the form of the stock certificate to be issued by the petitioner.

The director denied the petition, concluding that the petitioner failed to establish that the petitioner is a subsidiary of the foreign entity. Specifically, the director concluded that the petitioner failed to establish that it received monies from the foreign entity.

On appeal, counsel acknowledges that the sequence of transfers from the Russian to the U.S. entity "was complicated" and asserts that the transfers were done this way as a result of "a legal inability for the Russian company to directly transfer funds to the U.S. subsidiary (because of dire tax consequences)." Counsel again explains how the funds were borrowed from [redacted] and channeled through the beneficiary's husband, [redacted]

On appeal, counsel submits new evidence, including:

1. Letter from [redacted], advocate, explaining the sequence of transfers;
2. Letter reflecting that [redacted] holds two bank accounts (both accounts number [redacted]
3. Print-out from [redacted] personal account (account ...[redacted]) showing a credit of 1067184.69 received on May 11, 2012; and
4. The foreign entity's bank statement showing a debit amount of 1,067,184.69 made on May 11, 2012.

Discussion

Upon review, the petitioner failed to establish the qualifying relationship between the U.S. and foreign entities. A review of the record reflects that the petitioner submitted conflicting and unreliable documentation and claims regarding the U.S. petitioner's formation and ownership. The petitioner also failed to reconcile the inconsistencies regarding the foreign entity's purported capital contribution to the U.S. petitioner.

As a preliminary matter, the AAO will address the petitioner's claim that [redacted]. is "the holding company" for the U.S. petitioner, [redacted] The petitioner failed to establish that [redacted] Inc. is the holding company for the petitioner. The evidence in the record, including the petitioner's Articles of Incorporation and Certificate of Amendment of Articles of Incorporation, confirms that the petitioner is one and the same company as [redacted], although the petitioner subsequently changed its name to [redacted] on February 13, 2012. Since the petitioner and [redacted] are one and the same entity, [redacted]. cannot be the holding company of the petitioner.

According to the petitioner's Articles of Incorporation (originally filed under the name [redacted]), the petitioner was formed as a legal entity in the United States on December 15, 2009. The date of the petitioner's formation in 2009 is significant, as it underscores the inconsistency and unreliability of the petitioner's claims that it is a company that will be created in the future or a "start-up" company. In particular, the petitioner's Executive Summary and Company History states that it "*will be* created as a California corporation" (emphasis added). Agreement [redacted], dated February 10, 2012, states that the

foreign entity "hereby *intends to set up* a subsidiary company in the USA, California – [redacted], Inc" and will transfer funds "for the purpose of setting up a subsidiary company *in the near future* (emphasis added). Similarly, the petitioner claims that the $35,000 from the foreign entity constituted "start-up capital contribution" for the U.S. petitioner. The repeated references to the U.S. petitioner as an entity that will be created in the future or a start-up company are inconsistent with the fact that the petitioner was already formed in 2009. The petitioner has failed to provide any explanation for why it claims to be a company that will be created in the future or a "start-up" company when it has existed since 2009.

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.*

As evidence of the foreign entity's ownership of the U.S. entity, the petitioner submitted copies of its stock certificate number 1 showing that the foreign entity was issued 100 shares on March 30th, and its stock transfer ledger showing that the foreign entity became the owner of 100 shares on April 1, 2012.[5] Notably, the issuance date of the stock certificate and the date of ownership indicated on the share transfer ledger differ by one day. Regardless, if it is true that the foreign entity became the owner of 100 shares of the petitioner on March 30, 2012 or April 1, 2012, then the record fails to reflect that there was a qualifying relationship between the petitioner and the foreign entity as of the date of filing, March 23, 2012. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

The petitioner's issuance of stock to the foreign entity on March 30, 2012 or April 1, 2012 is problematic for another reason: it conflicts with various documents the petitioner submitted, particularly, the petitioner's Certificate of Amendment of Articles of Incorporation and "Action of the Members and Managers of [redacted] Taken by Written Consent in Lieu of a Meeting," dated April 23, 2012.

In its Certificate of Amendment of Articles of Incorporation, which was filed with the State of California on February 13, 2012, the petitioner certified under penalty of perjury that "[t]he total number of outstanding shares of the corporation is 100." The petitioner failed to explain why it claimed to have already issued 100 shares of stock as of February 13, 2012, when it did not issue stock certificate number 1 until March 30, 2012, and when it recorded the foreign entity as the sole owner of 100 shares as of April 1, 2012.

Similarly, the "Action of the Members and Managers of [redacted] Taken by Written Consent in Lieu of a Meeting" purported to authorize the form of the petitioner's stock certificate effective April 23, 2012. The petitioner failed to explain why or how it could have issued stock certificate number 1 and recorded such issuance on the stock transfer ledger almost one month *prior* to the petitioner's authorization of the stock certificate form.

[5] Although the year of issuance is not specified on the stock certificate, it is assumed that stock certificate number 1 was issued on March 30, 2012.

In addition, the petitioner's own Executive Summary states that it will be "owned by its principal investor and operator, [the beneficiary]." This undermines the petitioner's claims that it is a wholly owned subsidiary of the foreign entity.

The petitioner also failed to clarify and resolve the inconsistencies regarding the foreign entity's purported transfer of $35,000 to the U.S. entity.

The petitioner claims that the foreign entity was unable to make the transfer directly due to "certain legal constraints in Russia." However, the petitioner failed to specify the exact "legal constraints" against the transfer, other than to vaguely state that such a transfer would have "dire tax consequences." Moreover, the petitioner failed to provide any proof of the "legal constraints," i.e., evidence of the Russian laws and/or regulations that would apply to the foreign entity if it made such a transaction. In immigration proceedings, the law of a foreign country is a question of fact which the petitioner bears the burden of proving if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973).

The petitioner claims that the foreign entity provided a total initial capital contribution of $35,000. However, according to the "Action of the Members and Managers of [redacted] Taken by Written Consent in Lieu of a Meeting," the foreign entity provided the petitioner with start-up capital of $25,000 plus $14,500, for a total of $39,500.

The petitioner failed to explain the affiliation of [redacted] to the petitioner and the foreign employer. The RFE specifically advised the petitioner that for all funds not originating with the foreign company, the petitioner must explain the source and reason for receiving such funds from a third party, and explain the third party's affiliation to the foreign and U.S. entities. 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). The petitioner's failure to explain [redacted] affiliation to the U.S. and foreign entities raises questions as to the underlying purpose of the transaction.[6]

The petitioner's failure to explain [redacted] affiliation is even more significant considering that the "Loan Contract" between [redacted] and the petitioner is unreliable. The contract, dated February 1, 2012, refers to the petitioner as "[redacted]" However, the petitioner did not legally change its name from [redacted] until February 13, 2012. In addition, the actual check written by [redacted] was made to [redacted], not to [redacted] as the petitioner is specifically named in the loan contract.

The petitioner claims that the foreign entity used the beneficiary's husband, [redacted], as a "contracted intermediary" to make the transfer to the U.S. entity on the foreign entity's behalf. As evidence of the agreement between [redacted] and the foreign entity, the petitioner submitted Agreement [redacted] However, the terms of Agreement [redacted] do not corroborate the petitioner's claims; rather, Agreement [redacted] specifically states that [redacted] will transfer the $35,000 to the foreign entity's account, not to the U.S. entity's account. There are no provisions in Agreement [redacted] specifically stating that [redacted] is to transfer the $35,000 to the U.S. entity's account. As discussed above, Agreement

[6] The record reflects that the petitioner did not pay any commission or interest for this loan.

[redacted] is unreliable for another reason, as it refers to the foreign entity's intent to set up the U.S. entity as a subsidiary in the near future, notwithstanding the fact that the U.S. entity has already existed since 2009.

The petitioner failed to provide a credible and truthful explanation for why it did not submit proof of the foreign entity's stock purchase. The petitioner's explanation that "Proof of Stock Purchase does not exist because it is a brand new company" is neither consistent with the fact that the petitioner was incorporated in 2009, or with the petitioner's claim that it actually issued stock to the foreign entity. While it is not required that the foreign entity purchase the stock for any set amount of money if the petitioner can otherwise establish that adequate consideration was provided in exchange for the issuance of stock, the petitioner is nevertheless required to submit a truthful explanation in response to the director's request for evidence. 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).

Based on the foregoing reasons, the petitioner failed to establish that it has a qualifying relationship to the foreign entity. Accordingly, the appeal must be dismissed.

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.