

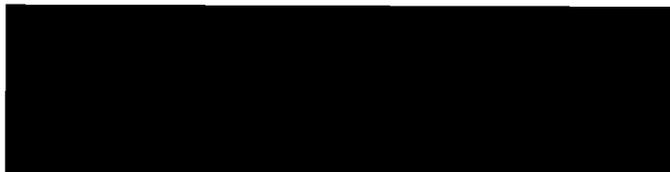
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COMMENT**



D7

File: WAC 08 149 53395 Office: CALIFORNIA SERVICE CENTER Date:

**MAY 12 2010**

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)

IN 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a California corporation that sought to employ the beneficiary as its president for a one-year period commencing on June 1, 2008. The petitioner filed this petition seeking to employ 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 director denied the petition on the basis of two independent grounds of ineligibility: 1) the petitioner failed to establish that it secured sufficient physical premises to house its new business operation; and 2) the petitioner failed to establish that it has a qualifying relationship with the beneficiary's employer abroad.

On appeal, counsel disputes the director's findings and states that an appellate brief would be submitted within 30 days of filing the appeal. To date, however, seventeen months after the appeal was filed, the record has not been supplemented with any additional evidence or information. As such, the AAO will consider the record complete as presently constituted and will render a decision on the basis of the documentation that has been presented thus far.

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.

In addition, the regulation at 8 C.F.R. § 214.2(l)(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, 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 first issue in the present matter is whether the petitioner submitted sufficient evidence to establish that it had secured sufficient physical premises to house the new business at the time the Form I-129 was filed.

In support of the Form I-129, which was filed on May 16, 2008, the petitioner provided a document titled "Contract for Lease," naming the petitioner as the tenant at [REDACTED] for a one-year lease term commencing on May 1, 2007 and ending on May 1, 2008. According to this information, the lease term expired approximately two weeks prior to the filing of the instant Form I-129.

Accordingly, on July 16, 2008, the director issued a request for evidence (RFE), instructing the petitioner to provide numerous additional documents, including evidence to establish that sufficient physical premises had been secured. The petitioner's response to this request consisted of a document titled, "Letter of Confirmation," executed on September 19, 2008, which indicated that the petitioner entered into a lease agreement with [REDACTED] on September 1, 2008. The petitioner also provided a photocopied lease agreement showing that the petitioner would occupy the premises at [REDACTED] from September 1, 2008 through August 31, 2009. The petitioner did not, however, provide any documentation establishing where the business was housed between May 1, 2008, when the prior lease expired, and September 1, 2008, when the terms of the subsequent lease went into effect.

On November 3, 2008, the director denied the petition, concluding that the petitioner failed to establish that it had secured sufficient physical premises to house its business operation. The director referred to the lease

agreement that commenced on September 1, 2008 and noted that the leased space was a sublet that was shared with other businesses and that the lease was not in effect at the time the Form I-129 was filed.

On appeal, counsel asserts that the director erred in finding that sufficient physical premises had not been secured and refers to the new lease agreement that was submitted in response to the RFE. However, as indicated in the denial, the director fully acknowledged U.S. Citizenship and Immigration Services' (USCIS) receipt of the new lease agreement. Therefore, contrary to the inference in counsel's statement, the petitioner's submission had not been overlooked. Rather, the director properly pointed out that the lease term of the most recent lease did not commence until after the petition was filed. The director was therefore right to question where the petitioner's business was housed at the time of filing since the petitioner's first lease had expired prior to the filing of the petition. Counsel has not addressed the director's comments. As such, the petitioner has not overcome the adverse conclusion and on the basis of this initial ground for ineligibility this petition cannot be approved.

The second issue in the present matter is whether the petitioner had submitted sufficient documentation to establish that it has a qualifying relationship with the beneficiary's foreign employer.

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)(I) state:

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

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

*Branch* means an operation division or office of the same organization housed in a different location.

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

*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.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(L) state, in pertinent part:

*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 support of the Form I-129, the petitioner provided a letter dated April 14, 2008 in which it claimed that it is a subsidiary of [REDACTED], located in the Philippines. The petitioner also provided a copy of its certificate of incorporation, a statement of information, and a letter from the IRS indicating that the petitioner had been assigned an Employer Identification Number. The petitioner also provided a notarized document titled "Secretary's Certificate," executed on April 15, 2008, in which [REDACTED], the foreign entity's corporate secretary, stated that the beneficiary is the president and major stockholder of the foreign entity and that the beneficiary had been authorized, via board resolution, to set up a subsidiary in the United States.

The director determined that the above documentation was insufficient and therefore issued the RFE with instructions to provide additional evidence establishing that the beneficiary's foreign and proposed employers have a qualifying relationship. The documents the petitioner was asked to provide included, but were not limited to, proof of stock purchase (including original wire transfers), minutes of the meeting listing the petitioner's stockholders, stock certificates issued to the present date, and the petitioner's stock ledger showing all stock certificates issued, the names of shareholders, and the purchase price of the stock.

In response, counsel submitted an undated letter in which he listed the supporting exhibits that were being submitted to address the director's request. The petitioner's submissions included the following documents:

1. Two bank wire receipts—one dated January 10, 2008 and another dated February 22, 2008—each showing the petitioner as the recipient of \$10,000 and the foreign entity as the originator of the transferred funds.
2. The petitioner's bank statement for February 2008 showing the deposit of the second wire fund transfer.
3. Three notarized documents titled "Secretary's Certificate," containing resolutions made by the foreign entity with regard to the U.S. petitioner. The first document, executed on September 17, 2007, resolved to open the U.S. entity and retain and pay for the services of an attorney to

assist with setting up the U.S. office. The second document, executed on November 9, 2007, resolved to file an articles of incorporation establishing the U.S. entity and to open a bank account in California. The third document, executed on January 9, 2008, resolved that the foreign entity would contribute \$20,000 in two payments to pay for the petitioner's expenditures.

4. The petitioner's articles of incorporation in which Article IV states that the petitioner is authorized to issue 100,000 shares of stock.

Additionally, counsel asked that USCIS excuse the petitioner from having to submit minutes of the petitioner's stock ownership, stock certificates, and a stock ledger based on the explanation that the petitioner was only recently incorporated and had not yet started operations.

In the denial, the director focused on the petitioner's failure to submit several of the requested documents with regard to the U.S. entity's ownership. Accordingly, the director concluded that the petitioner failed to establish that the beneficiary's U.S. and foreign employers have a qualifying relationship.

As stated in the director's decision, 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.

Although stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity, the petitioner was nevertheless instructed to provide its stock certificates, as well as a number of other documents, to establish ownership and control. 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, as pointed out in the director's decision, 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.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

In the present matter, the petitioner has submitted evidence establishing that the foreign entity contributed \$20,000 via bank wire transfers to pay for the U.S. entity's initial operating expenses. These funds are not sufficient to corroborate the claim that the foreign entity owns and controls the U.S. entity. Furthermore, while counsel indicated that the petitioner should be excused from having to submit such relevant documents as *stock certificates and a stock ledger* because the petitioner had been incorporated for less than one year,

there are no statutory or regulatory provisions that impose time restrictions on a corporate entity prior to allowing it to issue stock or record stock transactions in a stock ledger. In fact, it is commonplace for many entities to issue stock shortly after, or simultaneous with, incorporation and to record any stock issuance in a stock ledger. While the petitioner may not be in violation of any state law provisions by not issuing stock, evidence of stock issuance is among factors that are considered in determining an entity's stockholders, i.e., its owners. In the present matter, the petitioner provided evidence of the foreign entity's monetary contribution to pay for the foreign entity's start-up expenses. However, without further documentation, the AAO cannot assume that such contribution resulted in the foreign entity acquiring an ownership interest in the petitioning entity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). On appeal, counsel asserts that the petitioner has provided "voluminous documents" of its corporate existence. However, the petitioner's corporate existence is not in question. Rather, the director's primary concern was whether the petitioner and the beneficiary's foreign employers share common ownership and control such that they could be deemed to have a qualifying relationship. Neither the documents submitted prior to the denial nor counsel's assertions on appeal adequately address the relevant subject matter. Accordingly, the petitioner has failed to establish that it had a qualifying relationship with the beneficiary's foreign employer at the time of filing the petition.

Additionally, while not addressed in the director's decision, the AAO notes an additional deficiency that precludes a favorable finding. Specifically, the AAO finds that the petitioner has failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. While the petitioner was expressly instructed to provide a detailed description of the beneficiary's job duties while employed at the foreign entity, the petitioner did not provide the requested information. It is noted that 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). Although the petitioner's April 14, 2008 support letter contains a brief description of the beneficiary's employment with the foreign entity, the job description does not include a list of the beneficiary's specific job duties. This level of detail is essential, as the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). As the petitioner failed to provide the requested information about the beneficiary's foreign employment, the AAO cannot conclude that the beneficiary was employed abroad in a qualifying managerial or executive capacity as required by 8 C.F.R. § 214.2(1)(3)(v)(B).

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). Therefore, this petition will be denied on the basis of the additional ground of ineligibility discussed above.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.