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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



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DATE: **AUG 07 2012**

Office: CALIFORNIA SERVICE CENTER

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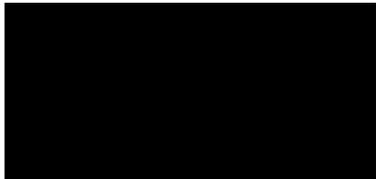
Petitioner:

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,

Perry Rhew  
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 petition 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, a corporation established under the laws of the State of California in 2009, states that it intends to engage in international trade. It claims to be a subsidiary of Wenzhou Shiqun Clothing Co., Ltd., located in China. The petitioner seeks to employ the beneficiary as the president of its new office in the United States for a period of three years.<sup>1</sup>

The director denied the petition on March 31, 2010, after concluding that the petitioner failed to establish that the United States and foreign entities have a qualifying relationship. Specifically, the director found that the petitioner did not submit evidence that its claimed foreign parent company paid for its ownership interest in the new U.S. company. The director acknowledged the petitioner's claim that the foreign entity had four of its employees transfer a total of \$200,000 to the United States company rather than transferring the money directly, but determined that the petitioner did provide documentary evidence of a Chinese government policy to restrict Chinese businesses from investing foreign currency into businesses overseas or documentary evidence to establish that funds provided to the foreign entity's employees were actually passed on to the petitioning company.

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 the petitioner submitted evidence to establish that the foreign entity ultimately provided the \$200,000 investment in the United States company through four individuals. Counsel emphasizes that there is no statutory or regulatory requirement that the money to purchase the stock come directly from the parent company. The petitioner submits an affidavit from [REDACTED] a licensed lawyer in China, who explains the country's foreign exchange control laws, and observes that the indirect investment method used by the foreign entity is a normal and legitimate practice in China.

Upon initial review of the evidence of petition and appeal, the AAO noted an additional inconsistency in the record with respect to the foreign funds transfers to the U.S. company, and further found potentially derogatory information regarding the ownership of the U.S. company after reviewing the petitioning company's public web site. Accordingly, on May 4, 2012, the AAO issued a notice of derogatory information and intent to deny pursuant to 8 C.F.R. § 103.2(b)(16)(i), and provided the petitioner with 30 days in which to submit rebuttal evidence. As of this date, the petitioner's deadline for a response has passed, and the AAO has not received any additional evidence. Accordingly, the record will be considered complete.

## I. THE LAW

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<sup>1</sup> Pursuant to 8 C.F.R. § 214.2(l)(7)(i)(A)(3), 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.

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 the 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) 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 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 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 (1)(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. FACTS AND PROCEDURAL HISTORY

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 3, 2010. On the L Classification Supplement to Form I-129, the petitioner identified Wenzhou Shiqun Clothing Co., Ltd. as the beneficiary's current employer. The petitioner indicated that the Chinese company owns 100 percent of the U.S. company's stock.

In a letter dated January 28, 2010, previous counsel for the petitioner stated that the foreign entity wire transferred \$200,000 to the U.S. company's account and was issued 100,000 shares of stock with a par value of \$2.00. The petitioner submitted the following evidence in support of the petition:

- Resolution of Shareholders Conference of Wenzhou Shiqun Clothing Co. Ltd. held on November 30, 2009 in which the foreign entity resolved to establish a U.S. subsidiary in the United States, to invest \$200,000 in exchange for 100% of the U.S. company's shares, and to appoint the beneficiary as the president of the new company.
- Copy of the U.S. company's Articles of Incorporation filed with the State of California on December 9, 2009. The articles indicate that the petitioner is authorized to issue one million shares of stock.
- State of California Statement of Information which indicates that the officers and directors of the U.S. company are the beneficiary, [REDACTED]
- Copy of the petitioner's stock certificate number one (1) which indicates that the company issued 100,000 shares of stock to Wenzhou Shiqun Clothing Company Limited on January 5, 2010.
- Copy of the U.S. company's stock transfer ledger, which identifies the foreign entity as the sole shareholder and indicates that it paid \$200,000 for its 100,000 shares of stock.
- Copy of the U.S. company's California Notice of Transaction Pursuant to Corporations Code Section 25102(f), which indicates that the company issued stock in exchange for \$200,000.

The petitioner also submitted the following evidence related to the transfer of the \$200,000 from the foreign entity to the U.S. company:

- Pacific City Bank online Wire Automation - Detail indicating that, on December 29, 2009, Kerisma Inc. (Account [REDACTED]) received a wire transfer in the amount of \$50,000 (less fees) from [REDACTED]. The wire transfer originated from Bank of China, Zhejiang, account number [REDACTED].
- Pacific City Bank online Wire Automation - Detail indicating that, on December 30, 2009, Kerisma Inc. (Account [REDACTED]) received a wire transfer in the amount of \$50,000 (less fees) from [REDACTED]. The wire transfer originated from Bank of China Zhejiang, account number [REDACTED].
- Pacific City Bank online Wire Automation - Detail indicating that, on December 30, 2009, Kerisma Inc. (Account [REDACTED]) received a wire transfer in the amount of \$50,000 (less fees) from [REDACTED]. The wire transfer originated from Bank of China, Zhejiang, account number [REDACTED].
- Pacific City Bank online Wire Automation - Detail indicating that on December 31, 2009, Kerisma Inc. (Account [REDACTED]) received a wire transfer in the amount of \$50,000 (less fees) from [REDACTED]. The wire transfer originated from Bank of China, Zhejiang, account number [REDACTED].
- Copy of the petitioner's Pacific City Bank Account Statement for account number [REDACTED] dated December 31, 2009, indicating the company's receipt of the four wire transfers mentioned above.
- Affidavits from the beneficiary, [REDACTED]. Each individual indicates that he or she, "on behalf of Wenzhou Shiqun Clothing Co., Ltd. has transferred the fund of US\$50,000 of Wenzhou Shiqun Clothing Co. Ltd. at my account to the account of its US subsidiary, Kerisma Inc." Each individual states: "This fund is the investment fund of Wenzhou Shiqun Clothing Co. Ltd. in its US subsidiary."
- Copies of Bank of China Applications for Funds Transfer (Overseas) completed by the beneficiary, [REDACTED].

Finally, the petitioner submitted a Resolution of Shareholders Conference dated December 1, 2009, in which the shareholders resolved:

Because of the current policy of China on foreign currency, the Shareholders Conference has decided to authorize [REDACTED] [REDACTED] to wire transfer, through their accounts, the investment fund of \$200,000 (Two hundred thousand US dollars) of Wenzhou Shiqun Clothing Co., Ltd. to the bank account of our US subsidiary, Kerisma Inc. in the United States (Bank Name: PacificCityBank, Account Number [REDACTED]).

On February 16, 2010, the director issued a request for additional evidence (RFE). With respect to the petitioner's claimed qualifying relationship with the foreign entity, the director stated: "The documents submitted indicate that the foreign company did not pay for the U.S. entity. Although the petitioner

submitted affidavits indicating individuals were instructed by the foreign company to pay for the U.S. entity, this does not establish the foreign company paid for the U.S. entity."

Accordingly the director instructed the petitioner as follows:

Submit evidence to show that the foreign parent company has, in fact, paid for the U.S. entity. The evidence should include bank-certified copies of the original wire transfers from the parent company. Also, bank-certified copies of cancelled checks, deposit receipts, etc. detailing monetary amounts for the stock purchase should be submitted. Provide the account holder names and affiliation to the foreign entity for all persons making purchases and the bank accounts that were used. The originator(s) of the monies deposited or wired must be clearly shown and verifiable by name with full address and phone/fax number. For all funds not originating with the foreign company, explain the source and reason for receiving such funds, and provide the names of all account holders depositing these funds, and their affiliation to the foreign or U.S. company.

In response, petitioner's previous counsel indicated that the petitioner was providing additional evidence to establish that the foreign entity provided the funds to the four individuals who transferred the \$200,000 to the United States company.

This evidence included four Bank of China "Form of Transfer (Receipt Copy)" indicating that Wenzhou Shiqun Clothing Co. Ltd. transferred ¥342135.00 from its account at the Bank of China Wenzhou Nanchen Sub-branch [REDACTED] to each of the following accounts:

- [REDACTED] Bank of China, Wenzhou Branch,
- [REDACTED] Bank of China, Wenzhou Branch,  
Yongjia Subbranch Office
- [REDACTED] Bank of China, Wenzhou
- [REDACTED] Bank of China, Wenzhou  
Branch, Nancheng Subbranch Office

The petitioner also submitted four affidavits from the foreign entity's bank confirming the transfer of these funds (the equivalent of \$50,000) to the four individuals' accounts on December 29, December 30 and December 31, 2009.

The petitioner also submitted a letter of explanation from the foreign entity regarding its decision to indirectly transfer the claimed \$200,000 investment to the United States. The foreign entity explained that, due to the nature of its activities, the company is "not allowed to open a foreign currency account," and that, under current Chinese policy on the administration of foreign currencies, "a company is not allowed to wire transfer overseas if it does not have a foreign currency account." The foreign entity explained that a company without a foreign currency account that seeks to wire transfer money overseas must first "apply to

authorities for approval and then apply to the foreign currency administering authority for the amount of funds to be transferred." According to this letter, this process takes at least six months to one year.

The foreign entity further explained that, as individuals are able to transfer up to \$50,000 outside of China, the company's shareholders authorized four employees, the beneficiary, [REDACTED], to wire transfer the investment funds. The foreign entity stated that it transferred \$50,000 to each of their personal accounts and they immediately transferred the funds from their personal accounts to the U.S. subsidiary's bank account.

The foreign entity also submitted employment letters for the beneficiary, [REDACTED], to verify that they were employed by the company in December 2009.

The director denied the petition on March 31, 2010 after concluding that the petitioner failed to establish that the U.S. and foreign entities have a qualifying relationship. The director's determination was based on a finding that the petitioner did not provide evidence that the foreign entity actually paid for its interest in the United States company.

The director acknowledged the petitioner's documentation showing that the foreign entity transferred funds to four individuals. However, the director concluded that "the record does not contain documentation to indicate that the money was actually passed on to the petitioner, as the petitioner claims was the original intent." Further, the director determined that "there is no documentary evidence of a Chinese government policy to restrict Chinese businesses from investing foreign currency into businesses overseas."

On appeal, counsel asserts that the petitioner thoroughly explained and documented the process the foreign entity used to transfer \$200,000 to the U.S. company with the assistance of four company employees. Specifically, counsel asserts that the foreign entity's shareholder resolutions demonstrate the intent to transfer the funds to the new U.S. subsidiary indirectly through four individuals. Counsel asserts that the evidence documents the transfer of \$50,000 from the foreign entity to each individual, each individual's subsequent request to transfer \$50,000 to the U.S. company, and the U.S. company's receipt of the money from each person. In addition, counsel emphasized that each individual who transferred the funds provided an affidavit confirming the purpose of the funds transfer and the source of the funds.

Counsel asserts that this "Chain of Evidence already satisfied the requirement of payment for the purchase of stock from the parent company." Counsel emphasizes that "there is no statutory laws or case laws so far required that the money to purchase the stock" must come directly from the parent company's bank account to the petitioner's bank account.

In support of the appeal, the petitioner submits an affidavit from [REDACTED], who states that he is a licensed attorney in China. Mr. [REDACTED] explains that China has a government agency called State Administration of Foreign Exchange Control. He explains that a domestic Chinese investor intending to make an investment abroad is required to submit documents for examination by the foreign exchange control office before applying for examination and approval of the investment project by the Ministry of Foreign Economic

Relations and Trade (MOFERT). Mr. [REDACTED] states that "it normally takes six months to years to get approval from MOFERT and also has fifty percent chance of being denied finally."

Mr. [REDACTED] asserts that Chinese individuals may "send out foreign currency to foreign countries fifty thousand US dollars a year." He goes on to state that "[i]t is a very normal and legal practice where most companies, especially those without a foreign currency account, transfer the investment money to individuals first, then these individuals transfer the investment money to the subsidiary overseas."

The petitioner also submits China's State Administration of Foreign Exchange Control Rules for Implementation of Measure on Foreign Exchange Control in Investment Abroad, promulgated on June 26, 1996.

Subsequently, the AAO issued a notice of derogatory information and intent to deny on May 4, 2012. With respect to the evidence submitted regarding the wire transfers, the AAO observed that three of the wire transfers, as recorded on the Pacific City Bank on-line wire notifications, list the originating bank and account number as "Bank of China, Zhejiang" located in Hangzhou, Zhejiang province, and account number [REDACTED]. The remaining wire transfer, from [REDACTED] identifies the same originating bank but indicates the funds were transferred from account number [REDACTED].

The AAO advised the petitioner that the evidence in the record indicates that the foreign entity transferred \$50,000 to each of the following accounts:

- [REDACTED] Bank of China, Wenzhou Branch,
- [REDACTED] Bank of China, Wenzhou Branch,  
Yongjia Subbranch Office
- [REDACTED] Bank of China, Wenzhou
- [REDACTED] Bank of China, Wenzhou  
Branch, Nancheng Subbranch Office

Therefore, the AAO found that the record did not demonstrate that the money the foreign entity transferred to these four accounts was ultimately transferred to Kerisma Inc.'s U.S. bank account. Rather, the funds transferred to the U.S. entity originated from two different accounts at the Hangzhou branch of the Bank of China, and not from the four accounts listed above. The owner(s) of those two accounts is not identified in the record.

Accordingly, the AAO advised the petitioner to submit additional evidence to establish that the foreign entity did in fact contribute the claimed \$200,000 investment to the U.S. entity. The AAO advised that this evidence should include, but is not limited to, the following:

- Documentary evidence linking the funds transferred to the United States to the accounts owned by the four individuals who made the transfers.

- Copies of bank statements for the months of December 2009 and January 2010 for all parties involved including the foreign entity, the four individuals who made wire transfers, and the U.S. company.
- A copy of the U.S. company's IRS Form 1120, U.S. Corporation Income Tax Return, for 2010, with all schedules, statements and attachments.

The AAO further advised the petitioner as follows:

In addition, the AAO has reviewed Kerisma, Inc.'s website at <http://www.kerismaknits.com>. The web site provides the following information:

— Kerisma explores the endless possibilities in everyday knitwear fashion through their multi-disciplinary, aesthetic sensibilities. Kerisma's inception seemed to be a natural yet logical progression from the trio's combined experience in garment manufacturing, wholesale distribution and architecture (including high-end retail and hospitality design) in Paris, Rome, Shanghai, New York, and lately LA.

The AAO notes that according to the petitioner's Statement of Information filed with the California Secretary of State, the company's officers are

The information conveyed on the company's website directly contradicts the petitioner's claim that it was established as a wholly-owned subsidiary of Wenzhou Shiqun Clothing Co. Ltd. Rather, the information the petitioner conveys to the public is that it is a family-owned and operated business. The record indicates that the foreign entity is owned by and not by members of the family.

The petitioner was provided with 30 days in which to provide rebuttal evidence in response to the AAO's notice, in accordance with 8 C.F.R. § 103.2(b)(16)(i). As of this date, the due date for the response has passed and the AAO has received nothing further from the petitioner or counsel.

### III. ANALYSIS

Upon review, the petitioner has failed to establish that the foreign entity paid for its claimed ownership interest in the U.S. company. 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.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. 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, 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., supra.* Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

The petitioner claims that the foreign entity purchased 100,000 shares of the U.S. company's stock in exchange for \$200,000. While the petitioner has submitted what counsel refers to as a "chain of evidence" tracing the \$200,000 investment back to the foreign entity, there is a disruption in this chain. Specifically, based on the petitioner's explanation of the process used to transfer the funds to the United States, the AAO would expect to see documentation verifying that the funds received by the U.S. company from the four employees of the foreign entity who purportedly transferred the funds were actually transferred from the personal accounts of these four individuals.

The evidence submitted, specifically the Pacific City Bank "Wire Automation – Details" show that the funds received in the U.S. company's accounts originated from two separate Chinese bank accounts [REDACTED] located at the Bank of China, Hangzhou, Zhejiang province. The petitioner has not documented the ownership of these two accounts, nor did it respond to the AAO's request for additional evidence to address this discrepancy in its "chain of evidence." 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). 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).

While the remainder of the evidence submitted supports the petitioner's assertions regarding the process by which the foreign entity purportedly chose to transfer \$200,000 to the U.S. company, the failure to show that the money actually received by the U.S. entity originated either directly from the foreign entity or indirectly through the described indirect transactions, the AAO cannot find that the funds that were ultimately received by the U.S. company are traceable to the foreign entity.

Even if the petitioner had overcome the director's determination with respect to the source of the funds used to purchase the petitioner's stock, the AAO also raised a second discrepancy based on its review of the petitioner's public web site.

As noted above, the petitioner owns a website called "Kerisma Knits" on which it claims to be a family-owned business established by the beneficiary and two of her relatives, rather than a subsidiary of the Chinese company. Again, the petitioner did not submit a response to the AAO's notice of derogatory information and the AAO is left to question the validity of the petitioner's claims and the current ownership of the U.S. company. 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).

Finally, the AAO acknowledges that the petitioner has provided an explanation as to why the foreign entity did not directly transfer funds from its corporate account to the U.S. entity's account, noting that the Chinese government's foreign exchange control policy prevented a direct transfer of funds from the foreign entity. In immigration proceedings, the law of a foreign country is a question of fact which must be proven 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 has supplemented the record on appeal with Mr. [REDACTED] affidavit, in which he states that it is "a very normal and legal practice" for Chinese companies to transfer investment money out of China through individuals rather than seeking approval through the proper foreign exchange authorities.

Notwithstanding Mr. [REDACTED] opinion that such practice is normal and legal, the AAO notes that the integrity of the submitted evidence is not enhanced by the claim that the wire transfers were realized through individuals so that the company could circumvent the currency transfer laws of the People's Republic of China. Although a petitioner may submit secondary evidence if the required documents do not exist or cannot be obtained, the AAO will not accept a petitioner's illicit or otherwise questionable activity as an excuse. See 8 C.F.R. § 103.2(b)(2)(i). Mr. [REDACTED] himself indicates that only 50 percent of requests to make foreign investments are approved by the Chinese Ministry of Foreign Economic Relations and Trade, thus it appears that, had the foreign entity gone through the correct channels in order to effectuate its foreign investment, there is a 50 percent chance that it would have been denied the request to establish a United States subsidiary.

Furthermore, the Chinese foreign exchange rules submitted on appeal are silent on the legality of using individuals to transfer monies outside of China. The rules at Article 19 state: "The domestic investor is not allowed to remit abroad foreign exchange funds without examination by the exchange control office of investment risks and sources of foreign exchange involved." Article 20 provides that "the foreign exchange control office may impose a fine of up to RMB 100,000 yuan on the domestic investor who fails to register with the exchange control office. While it may be "normal" for Chinese companies to circumvent these foreign exchange control rules, the AAO cannot conclude that the practice is entirely legal or legitimate.

The petitioner has not submitted evidence on appeal to overcome the director's determination, nor has it submitted evidence addressing the additional deficiencies and discrepancies noted in the AAO's notice of derogatory information and intent to deny issued on May 4, 2010. The AAO maintains plenary power to review each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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). Accordingly, the appeal will 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.