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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

D7

DATE: JUL 19 2012

Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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 nonimmigrant petition seeking to employ the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation, states that it operates a Kungfu and Chinese education business. It claims to be an affiliate of [REDACTED] and [REDACTED] located in Shandong, China. The petitioner is requesting L-1A status for the beneficiary so that he may serve in the position of Director of Education.

The director denied the petition, concluding that the petitioner failed to establish that the petitioner has a qualifying relationship with the overseas employer.

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 director made incorrect findings of fact and that the record supports the conclusion that a qualifying relationship exists between the petitioner and the overseas employer. Counsel submits a brief and additional evidence in support of the 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 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 sole issue addressed by the director is whether the petitioner has established that a qualifying relationship exists with the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 15, 2009. The petitioner indicated on the Form I-129 that it operates a Kungfu and Chinese education business with 10 employees and gross annual income of \$0. On the L Classification Supplement to Form I-129 Question 9, the petitioner indicated that the U.S. company is a 100% owned subsidiary of the foreign employer in China. As evidence of the qualifying relationship, the petitioner submitted the Articles of Incorporation, bylaws, stock certificates, and shareholder ledger for the U.S. entity.

The undated stock certificate shows issuance of one million share of stock to the foreign employer. The stock is valued at \$.10 a share. The shareholder ledger, dated April 16, 2008, states that on November 12, 2008, the foreign company became the owner of one million shares of stock for the amount paid of \$100,000.

The director issued a request for additional evidence ("RFE") on October 27, 2009 in which she instructed the petitioner to submit, *inter alia*, the following: (1) evidence that the foreign company has, in fact, paid for the U.S. entity including copies or the original wire transfers from the parent company, and (2) Notice of Transactions Pursuant to California Corporations Code Section 25102(f).

The petitioner responded on November 20, 2009 and provided bank-certified statements verifying wire transfers from the foreign company to the petitioner as follows : (1) June 2, 2008- \$10,000, (2) June 25, 2008- \$15,000 (3) October 7, 2008- \$10,000, (4) November 4, 2008- \$55,000, and (5) November 12, 2008- \$21,930. The petitioner also provided the application for the overseas funds transfers by the parent corporation for the same amounts.

The petitioner submitted the requested copy of the Notice of Transaction showing that on November 12, 2008, the petitioner intended to sell common stock for a value of \$100,000 to the foreign employer.

The director denied the petition on December 7, 2009. The director found that the record does not support a finding that the foreign entity supplied the initial capital. Specifically, the director states that there was no evidence that "at the time this certificate was issued, the petitioner received monies from [REDACTED] and [REDACTED] for the one million shares.

On appeal, counsel for the petitioner asserts that the "final sum on money was transferred on Nov. 12, 2008" and that the "parent-subsidiary relationship was established on Nov. 12, 2008." Counsel states that the "shareholder ledger submitted has clearly demonstrated the structure of the US entity at the time of filing."

Upon review, and for the reasons stated herein, the petitioner has not established that a qualifying relationship exists with the beneficiary's overseas employer.

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'r 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. § 103.2(b)(8)(ii). 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.

California Code §410(b) states as follows:

The full agreed consideration for shares shall be paid prior to or concurrently with the issuance thereof, unless the shares are issued as partly paid pursuant to subdivision (d) of Section 409, in which case the consideration shall be paid in accordance with the agreement of subscription or purchase.

As a preliminary matter, the stock certificate provided by the petitioner is not dated. Therefore, it is impossible for the AAO to make a determination as to when the stock certificate was issued relative to the date the foreign employer affected the final wire transfer.

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).

Furthermore, the petitioner's stock ledger is also inconsistent on the face of the document. The date the stock ledger was created, April 16, 2008, pre-dates the date upon which the alleged share transfer was to have occurred, November 12, 2008. Therefore, the ledger could not have recorded an event scheduled to happen in the future. 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). Willful misrepresentation in these proceedings may render the beneficiary inadmissible to the United States. Section 212(a)(6)(C) of the Act.

Finally, the petitioner submitted IRS Form 1120 U.S. Corporate Income Tax Return for 2008. On the Schedule K of the form, the petitioner stated that a foreign corporation, partnership, or trust did not directly own 20% or more of the total voting power of all classes of the corporation's stock. Therefore, the IRS Form 1120 is inconsistent with the assertion that the petitioner is a foreign-owned subsidiary. 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).

Due to the inconsistencies and deficiencies catalogued above, the petitioner has not met its burden to establish that the U.S. and foreign entities have a qualifying relationship. For this reason, the petition cannot be approved.

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.