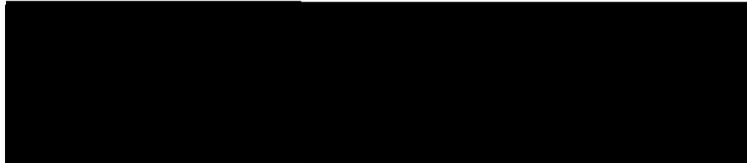




U.S. Citizenship
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DATE: **JUN 19 2012** Office: CALIFORNIA SERVICE CENTER FILE:

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 with the field office or service center that originally decided your case by filing a 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 the import and export of building materials and devices. It claims to be a subsidiary of [REDACTED], located in China. The petitioner seeks to employ the beneficiary as the president and chief executive officer of its new office in the United States for a period of one year.

The director denied the petition on May 28, 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 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 "contrary to the [service center's] finding, the record shows that petitioner has submitted a number of documents to show that the foreign entity supplied the initial capital of \$100,000 through wire transfer. Therefore petitioner has established the qualified relationship." Counsel indicated on the Form I-290B, Notice of Appeal or Motion, that he would submit a brief and/or additional evidence to the AAO within 30 days. As of this date, counsel has not submitted a brief or evidence, and the record will be considered complete.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) 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.

II. Discussion

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 (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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, February 10, 2010. On the L Classification Supplement to Form I-129, the petitioner identified [REDACTED]

██████████ as the beneficiary's current employer. The petitioner indicated that the Chinese company owns 100 percent of the U.S. company's stock. The petitioner submitted the following evidence in support of the petition:

- The foreign entity's "meeting resolution" dated August 9, 2009 (with English translation), which indicates that five company officers resolved to establish a subsidiary company in the United States;
- The U.S. company's Citibank N.A. bank statement for the month of October 31, 2009, which shows the company's receipt of two wire transfers in the amount of \$50,000 on October 27, 2009. The transferors are ██████████.
- Copy of a Bank of China – ██████████ "Overseas Fund Transfer – Letter of Confirmation" indicating that ██████████ transferred \$50,000 to the U.S. petitioner from an account ending in ██████████ on October 27, 2009.
- Copy of a Bank of China – ██████████ Transfer – Letter of Confirmation" indicating that ██████████ transferred \$50,000 to the U.S. petitioner from an account ending in ██████████ on October 27, 2009.
- Copies of Bank of China "Exchange Memo/Advice" (2) issued to ██████████ and ██████████ indicating the \$50,000 transfers.
- The U.S. company's stock certificate #01 indicating that 100,000 common shares with \$1.00 par value were issued to ██████████ on November 2, 2009.
- The U.S. company's stock transfer ledger indicating that it issued 100,000 shares to the foreign entity on November 2, 2009 and that no other shares have been issued.
- The U.S. company's Articles of Incorporation, which indicates that the company is authorized to issue 1,000,000 shares of stock.

In a letter dated January 20, 2010, the petitioner stated that the foreign entity established the U.S. company and "made an initial capital investment of US\$100,000 in [the petitioner] by wiring the fund into its account on October 27, 2009. The petitioner explained that "[b]ecause of the Chinese government's foreign currency regulations, [the foreign entity] had to make the exchange and wire transfer the \$100,000 investment all in the names of two individuals who are employees of [the foreign entity]."

The director issued a request for additional evidence (RFE) on February 19, 2010. The director acknowledged the petitioner's claim that the foreign entity purchased 100,000 shares of the petitioner stock, but observed that the petitioner submitted evidence that two individuals, rather than the foreign entity, actually transferred funds to the U.S. company. The director noted that "[r]egardless of the relationship of the individuals to the company or the beneficiary and regardless of Chinese regulation regarding foreign investment," if the parent company has not actually invested the \$100,000 claimed by the stock certificate, it does not own those shares.

Accordingly the director instructed the petitioner to submit the following:

Proof of Stock Purchase: Submit evidence to show that the foreign parent company has, in fact, paid for the U.S. entity. The evidence should include copies of the original wire transfers

from the parent company. Also, cancelled checks, deposit receipts, etc. detailing monetary amounts for the stock purchase should be submitted. The originator(s) of the monies deposited or wired must be clearly shown and verifiable by name with full address and phone/fax number.

In response, the petitioner submitted a letter dated May 8, 2010 from [REDACTED] the foreign entity's deputy general manager, who provided the following explanation regarding the foreign entity's claimed investment in the U.S. company:

[P]lease allow me to explain that [REDACTED] are employees of [the foreign entity]. Our company cannot remit the fund directly to the United States due to the Foreign Exchange control policy enforced by the Chinese government. Therefore, our company instructed two of its employee to draw the fund from the company, exchanged it to U.S. dollars and remitted to our U.S. branch's bank account as [the foreign entity's] investment to its U.S. branch company.

The petitioner did not submit any additional evidence related to these transactions, but instead referred the director to review the initial evidence. However, the petitioner did provide payroll records for the foreign entity which list [REDACTED] as employees.

The director denied the petition on May 28, 2010, concluding that the petitioner failed to demonstrate that it has a qualifying relationship with the foreign entity. In denying the petition, the director acknowledged the petitioner's explanation that the foreign entity had two of its employees transfer \$50,000 to the U.S. company in order to make the claimed \$100,000 investment. However, the director found that the petitioner did not provide evidence that the funds transferred actually originated with the parent company, and therefore provided insufficient evidence to establish that the foreign entity purchased 100,000 shares of the petitioning company.

On appeal, counsel for the petitioner asserts that "the record shows that petitioner has submitted a number of documents to show that the foreign entity supplied the initial capital of \$100,000 through wire transfer." Therefore, counsel contends that the petitioner established the qualifying relationship between the foreign and U.S. companies. Although counsel indicated that he would be submitted a brief and/or additional evidence in support of the appeal, the AAO has received nothing further from counsel or the petitioner.

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(i)(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 \$100,000. As noted by the director, the record remains devoid of any evidence demonstrating the transfer of funds from the foreign entity's account for the purpose of investing in the U.S. company. The record shows that two individuals transferred a total of \$100,000 to the petitioner's U.S. bank account, but does not establish the owner of the account(s) from which the funds were actually transferred. 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'r 1998) (*citing Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner has provided an explanation as to why the foreign entity did not directly transfer funds from its 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 not provided evidence of the foreign exchange control policy referenced in its statements.

Further, the petitioner must still demonstrate that the foreign entity ultimately paid \$100,000 for its claimed majority interest in the U.S. company. If two employees of the foreign entity made \$50,000 investments on behalf of the foreign entity, then the petitioner must establish that the foreign entity provided these individuals with those funds, and that it has repaid them, or has entered into a repayment arrangement with them. The petitioner simply states that it authorized two of the foreign entity's employees to transfer funds withdrawn from the foreign entity's accounts, but it has not provided evidence of any transfers of funds that occurred in

China to effectuate this transaction. The petitioner has not established that the funds received by the U.S. company originated with the foreign entity, and thus has not established that the foreign entity paid for its claimed ownership interest.

The petitioner has not submitted evidence on appeal to overcome the director's determination. 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.