

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



U.S. Citizenship  
and Immigration  
Services



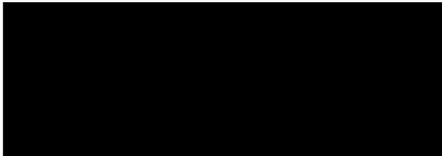
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DATE: NOV 28 2012 Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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,

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 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 California corporation established in 1996, states it is engaged in the manufacture of solar energy and telecommunications equipment, fiber optics components and subsystems. It claims to be a subsidiary of [REDACTED] in China. The petitioner seeks to employ the beneficiary as its President and Chief Executive Officer for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish a qualifying relationship between the U.S. and foreign employers. The director found that there was insufficient evidence to show that the foreign entity paid for its claimed acquisition of shares in the U.S. company from its existing shareholders.

On appeal, counsel asserts that the director erred in finding that one of the petitioner's shareholders did not receive compensation for the stock he sold to the foreign entity, and in turn, finding that no qualifying relationship was shown on the record. Counsel states that the director incorrectly concluded that compensation for the petitioner's stock must go directly to the petitioner, and not to the petitioner's individual shareholders. Counsel asserts that, although the method of transmittal was not ideal or direct, both shareholders did indeed receive compensation from the foreign employer for stock purchased. The petitioner submits additional evidence on appeal, including a signed statement from the petitioner's minority shareholder indicating that he did receive payment in exchange for the stock he sold to the foreign entity, and a wire transfer from the foreign employer to this shareholder dated September 19, 2011. Additionally, in the aforementioned statement, the same shareholder claims that all previous payment transactions to him were cancelled, and that the new transfer of money documented on appeal supersedes these previous payments.

### **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 (I)(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.

## II. Discussion

As stated, the director denied the petition, finding that the petitioner failed to establish that a qualifying relationship exists between the petitioner and the 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 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 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 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.*

Further, 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 filed the Form I-129, Petition for a Nonimmigrant Worker, on June 22, 2011. The petitioner indicated that it is a subsidiary of [REDACTED] and stated that the Chinese company owns 60% of the U.S. company.

In a letter attached to the Form I-129, the petitioner further explained the corporate relationship as follows:

At the end of 2010, ownership of [the petitioner] was vested in two individual shareholders, [REDACTED] (eighty percent ownership) and [REDACTED] (twenty percent ownership), who held all of petitioner's one hundred shares of issued common stock. In an agreement dated January 1, 2011, [REDACTED] agreed to each sell sixty percent of their stock to the Parent Company, for a total sales price of \$900,000.

On April 14, 2011, the purchase was consummated when the Parent Company transferred, via three separate wire transactions, the purchase funds from its [REDACTED] account to seller's [REDACTED]. Pursuant to this agreement, the Parent Company then became a sixty percent owner of petitioner (Exhibit 7).

The petitioner's initial evidence included an "Agreement for Stock Purchase" dated January 1, 2011 by and between [REDACTED] and the two petitioner's shareholders, [REDACTED] (owner of 80 out of 100 shares) and [REDACTED] (owner of 20 out of 100 shares). Pursuant to the offered agreement, the foreign employer purchased 48 shares from [REDACTED] and 12 shares from [REDACTED] for \$900,000.00, resulting in the foreign company's ownership of 60 of the petitioner's 100 issued shares.

Additionally, according to the terms of the stock purchase agreement, the foreign employer was to pay \$583,680.00 directly to [REDACTED] and \$145,920.00 to [REDACTED] as compensation for sale of their respective shares in the petitioning company, proportionally subtracting a \$174,400.00 "finder's fee" paid to a [REDACTED]. In support of this stock purchase agreement the petitioner also submitted the following: (1) a resolution of the foreign employer's board of directors approving the purchase dated November 24, 2010;

(2) a resolution of the petitioner's board authorizing the sale of stock dated January 21, 2011; (3) three wire transfers dated April 14, 2011 to [REDACTED] in the amounts of \$2,000,000, \$2,000,000, and \$1,889,240 Chinese Yuan respectively; and (4) the petitioner's stock certificates nos. 12, 13, and 14, all dated June 14, 2011, which indicate that the foreign entity owns 60 shares, [REDACTED] owns 32 shares, and [REDACTED] owns 8 shares, respectively. The stock certificates indicate on their face that the company is authorized to issue 10 million shares of common stock.

On August 4, 2011, the director requested additional evidence to establish that the U.S. and foreign entities have a qualifying relationship, including copies of the petitioner's corporate tax returns, a stock ledger for the U.S. company showing all stock certificates issued to the present date, and additional evidence that the foreign entity actually paid for its ownership interest in the U.S. company.

The petitioner's response to the director's request included: (1) a copy of the minutes of a special meeting of the board of directors dated January 21, 2011, which indicates that [REDACTED] and [REDACTED] each resolved to sell 60% of their respective shares to [REDACTED]; (2) a copy of the petitioner's stock transfer ledger; (3) a statement from [REDACTED] explaining the means by which the foreign entity compensated both shareholders; and (4) additional evidence pertaining to the foreign entity's purchase of 12 shares from [REDACTED]

As noted by the director, there are certain discrepancies on the record regarding the foreign entity's payment to [REDACTED] in the amount of \$145,920.00 for his sale of 12 shares of stock, as agreed upon in the aforementioned stock purchase agreement. For instance, according to a signed statement from [REDACTED] submitted in the response to the director's request for evidence, payment was purportedly made to [REDACTED] through transfer of funds from the foreign employer to [REDACTED], despite the stock purchase agreement clearly stating that payment would be made "by wire transfer from [the foreign employer] to [REDACTED] bank account to be designated by [REDACTED] bank account. Subsequently, two other transfers were made by [REDACTED] following his receipt of the funds from the foreign employer to a [REDACTED] and a [REDACTED] in the amounts of \$49,000.00, and through an additional wire transfer from these parties, [REDACTED] was purportedly paid these amounts as compensation for the offered stock purchase. Additionally, the petitioner provided evidence that [REDACTED] wrote a check to [REDACTED] on April 26, 2011 in the amount of \$47,265.00 for the remaining balance of the amount [REDACTED] was owed for the stock purchase. However, in a statement offered on appeal, [REDACTED] states that this previous payment arrangement was cancelled, and offers that the foreign employer paid [REDACTED] directly by wire transfer on September 19, 2011 in the amount of \$933,377.28 Chinese Yuan (or \$145,840.20 applying a 6.4 exchange rate offered on the record).

Based on a failure of the petitioner to adequately explain the discrepancies and inconsistencies related to the foreign entity's purchase of [REDACTED] 12 shares, the petitioner has not adequately documented the foreign entity's purchase of a majority of the U.S. company's stock, and thus has not established the claimed parent-subsidary relationship between the foreign and U.S. entities. The petitioner offers no viable explanation on the record, or on appeal, as to why such a convoluted scheme to pay [REDACTED] was necessary, particularly when the stock purchase agreement makes no mention of such an arrangement. Counsel offers

that the arrangement was “not ideal,” but was carried out in such a manner due to restrictive Chinese currency exchange laws. However, no such explanation of the applicable laws is provided, nor why such a non-ideal arrangement was necessary. Further, no specific explanation is made as to the need to transfer funds only to [REDACTED], and then to two wholly unrelated parties to pay [REDACTED]. 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).

Additionally, the viability of this transaction is further called into question when on appeal the funds owed [REDACTED] are offered as being directly transferred to [REDACTED] from the foreign employer on September 19, 2011, more than three months following the original submittal of the petition. Indeed, the newly offered transaction is in direct contradiction to the reasoning for the previously complex payment transaction and begs the question why this direct payment was not completed originally as required by the stock purchase agreement. 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. Further, 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).

Further, the petitioner offers no documentation, other than a statement from [REDACTED] to show that the previous payments made to him by [REDACTED] and the two other independent parties were in fact cancelled and the funds returned to the various payees. 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)). Lastly, even if such a cancellation and direct payment took place, this event is offered as taking place more than three months after the submittal of the petition. 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). Also, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Finally, there comes a point where it is more appropriate for such new evidence to accompany a new petition. See *Matter of Soriano*, 19 I. & N. Dec. 764 (BIA 1988).

Therefore, although evidence has been submitted on the record to show the offered qualifying relationship exists, the discrepancies related to payment to [REDACTED] cast doubt on the viability of the transaction, and the petitioner does not offer clear and independent objective and documentary evidence to resolve these material discrepancies.

In addition, to these discrepancies, the AAO notes that the petitioner failed to submit a complete response to the director's request for evidence, particularly, to the director's request for a copy of the petitioner's stock ledger. The petitioning company was established in 1996, and, based on the evidence in the current record, has issued at least 14 stock certificates to date. The director requested a stock ledger showing all stock

certificates issued to the present date including total shares of stock sold, names of shareholders, and purchase price. The petitioner provided a partial stock transfer ledger that indicates the ownership of the company back only as far as December 30, 2009, and only mentions the three numbered stock certificates that have been provided for review (nos. 12 through 14). Without evidence of the prior stock transactions, and with copies of only three stock certificates in the record, the petitioner has not adequately documented the actual ownership of the company at the time of the claimed transfer of shares. 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 inconsistencies and deficiencies, the petitioner has not established that it has a qualifying relationship with the foreign entity, and 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.