

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

[REDACTED]

D7

DATE: OCT 22 2012

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

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:

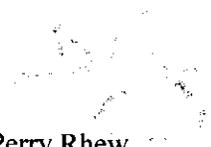
[REDACTED]

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, states that it operates a hospice care facility. It claims to be a subsidiary of [REDACTED] located in the Philippines. The petitioner seeks to employ the beneficiary as the Chief Executive Officer (CEO) of the new United States office for a period of one year.

The director denied the petition on June 7, 2010 concluding that the petitioner failed to establish that the U.S. company has a qualifying relationship with the foreign entity.

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, [REDACTED] acquired 100% of the shares of the U.S. company. Counsel maintains that the petitioner submitted proof that the foreign entity paid for the stock acquisition and continues to contribute funds to the U.S. company, and therefore has established the existence of a parent-subsidary relationship. Counsel submits a brief and documentary 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 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 (I)(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 March 31, 2010. The petitioner stated on the Form I-129 that the beneficiary's foreign employer, [REDACTED], owns 100 percent of the U.S. company's stock.

In a letter dated March 18, 2010, counsel for the petitioner stated that the petitioning company was established in March 2008 and only recently, in 2009, became fully operational upon receipt of licensure from the State of California to operate as a hospice care facility. Counsel stated that [REDACTED] acquired 100% of shares/equity of the U.S. company in November 2009, and referred USCIS to review Exhibit 13 for evidence of wire transfers between the two companies.

The petitioner's initial evidence included a document titled [REDACTED] of U.S. Subsidiaries" which identifies the petitioning entity as one of five health service companies acquired by the foreign entity in 2009. Specifically, this document indicates that the foreign entity acquired the petitioning company in May 2009 and "has funding for it to be fully operational as of November 5, 2009."

At the time of filing, the petitioner submitted the U.S. company's stock certificate #1, which indicates that "100,000 (100%)" of the shares of the company were issued to [REDACTED]. The stock certificate is neither dated nor signed by the company's officers. Further, the stock certificate appears to indicate an original issuance of shares to the foreign entity, rather than a transfer of shares from a prior stockholder, as the portion of the certificate designated for recording transfers of ownership is also blank.

The "Exhibit 13" referenced in counsel's letter consisted of 31 documents which were primarily applications for wire transfers dated between September 2009 and March 2010, some of which were mostly partially or primarily illegible. None of the documents dated in 2009 contain any reference to the petitioning company, [REDACTED]. The majority of the wire transfers from 2009 show that [REDACTED] and [REDACTED]" transferred funds from an unidentified account(s) in the Philippines to two different Bank of America accounts owned by the beneficiary. The petitioner did not explain the relevance of these wire transfers and did not re-submit these documents when requested to document funds transfers made by the foreign entity.

The petitioner also submitted telegraphic transfer of funds requests referencing [REDACTED] as a recipient of funds. The beneficiary is indicated as the requestor in all cases, although several of the forms indicate both his name and [REDACTED] as the requestor. None of the documents identify the bank and account number from which the transfers originated. The evidence indicates transfers in the amounts of \$13,068, \$14,200, \$9,500, \$9,700, \$12,300, \$13,500, \$18,600 and \$7,600. To the extent that the dates are legible, it appears that all of these transfers occurred during the end of February and first week of March 2010.

The petitioner also provided evidence of an international telegraphic transfer in the amount of \$15,000 from the Philippines bank account of the beneficiary and his spouse to the personal account of [REDACTED] on June 2, 2009. The petitioner did not explain the significance of this funds transfer.

Finally, the petitioner submitted copies of three checks in the amount of \$50,000 each drawn from the beneficiary's personal Bank of America account in 2009. All three checks were issued to [REDACTED] and are identified as "initial investment" or "partial investment." The AAO notes that the foreign entity claims [REDACTED]" as a separate U.S. subsidiary with 50% ownership by [REDACTED] who is claimed to be the majority owner of the foreign entity.

The petitioner's initial evidence also included a document titled "Brief Profile of [REDACTED] [REDACTED] which specifically mentions that the opening and rapid development of the hospice center came about, in part, because of "the financial backing of Filipino investor, [REDACTED]. The same document provides the following information regarding the company's corporate structure:

As of November 01, 2009:

The new Equity Holdings/Equity Holders are as follows:

	_____ shares;	_____ % equity
	_____ shares;	_____ % equity
	_____ shares;	_____ % equity
	_____ shares;	_____ % equity
	_____ shares;	_____ % equity
TOTAL	1,000,000 shares	100% equity

On April 13, 2010, the director issued a request for additional evidence (RFE). With respect to the claimed qualifying relationship, the director instructed the petitioner to submit: (1) complete and signed copies of stock certificates (front and back) issued by the U.S. company since its establishment; (2) a copy of the U.S. company's stock ledger showing all stock certificates issued to the present date, including the total shares of stock sold, names of shareholders and purchase price; (3) a copy of the minutes of the meeting for the U.S. company that lists the stock shareholders and the number and percentage of shares owned; (4) evidence to show that the foreign parent company has in fact paid for the U.S. entity, including bank-certified copies of wire transfers from the parent company, bank statements, cancelled checks and other evidence; and (5) a copy of the U.S. company's Notice of Transaction Pursuant to Corporations Code Section 25102(f) showing the total offering amounts.

In response, the petitioner re-submitted all copies of wire transfer documents identifying the petitioning company as the payee, as well as evidence of the \$15,000 payment made by the beneficiary to [REDACTED]

The petitioner also provided the Minutes of Special Board Meeting of the petitioning company dated November 6, 2009. The meeting minutes indicate that "the special meeting was called to discuss and confirm the purchase of 100% of the shares of stocks/total equity of [REDACTED] by new controlling stockholder, [REDACTED] which will be taken from the collective shares of [REDACTED] *pro rata*."

The meetings minutes further stated that "Total purchase price for subject 100% shareholdings/equity which have been fully paid by [the beneficiary] on behalf of [REDACTED] on November 6, 2009," and identifies [REDACTED] as the sole shareholder of the company.

The petitioner's response to the RFE included a new stock certificate #1, which indicates that 100,000 shares of the company's stock were issued to [REDACTED] on November 27, 2007. The petitioner also submitted a copy of stock certificate #2 which indicates that 100,000 shares were transferred from [REDACTED] and issued to [REDACTED] on November 6, 2009. The petitioner also submitted a stock

transfer ledger which reflects [REDACTED] as the original sole shareholder and the foreign entity as the new sole owner as of November 6, 2009.

The petitioner provided copies of its [REDACTED] account statements for the months of February through May 2010; however, the bank statements do not identify its receipt of wire transfers corresponding with the amounts shown on the above-referenced transfer request forms.

The director denied the petition on June 7, 2010, concluding that the petitioner failed to establish that the U.S. and foreign entities have a qualifying relationship. In denying the petition, the director acknowledged the petitioner's submission of wire transfer documentation, but emphasized that none of the submitted documentation clearly shows that the monies transferred to the petitioning company originated from the foreign entity's accounts. Furthermore, the director noted that the petitioner submitted, without explanation, two different versions of the U.S. company's stock certificate number one. The director concluded that the petitioner failed to submit evidence to support its claim that the foreign entity owns 100 percent of U.S. company's stock.

On appeal, counsel for the petitioner asserts that the petitioner submitted ample evidence to establish that the foreign entity purchased 100% of the U.S. company's stocks. Counsel emphasizes that such evidence included the November 6, 2009 Minutes of the Special Board Meeting, the previously submitted wire transfer documents, and the U.S. bank account statements of the U.S. company.

In addition, counsel asserts that "this petition to transfer the Vice President of Operations to oversee the newly acquired business is part of the parent company exercising its control over [the U.S. company]." The petitioner submits copies of previously submitted documentation in support of the appeal.

### III. ANALYSIS

Upon review, the petitioner has failed to establish that the U.S. and foreign entities have a qualifying relationship.

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 all 100,000 shares of stock of the U.S. entity for an undisclosed purchase price and assumed ownership of the company as of November 6, 2009. However, the AAO affirms the director's determination that there are significant discrepancies and omissions in the record which prohibit a conclusion that the claimed parent-subsidiary relationship exists.

First, the petitioner has submitted two different versions of the U.S. company's stock certificate #1. The certificate submitted at the time of filing was neither signed nor dated and appeared to identify the foreign entity as the original sole shareholder of the U.S. company despite the fact that the company was established in 2007, two years prior to the foreign entity's claimed stock purchase, and despite the fact that the petitioner indicates that it acquired stocks previously issued to [REDACTED]. The stock certificate simply did not provide credible evidence of the foreign entity's claimed ownership of the U.S. company.

The stock certificates submitted in response to the RFE are consistent with the petitioner's account of the stock ownership of the U.S. company; however, the petitioner offered no explanation for its submission of a different version of the same company's stock certificate #1 at the time of filing. 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, 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. at 591 (BIA 1988).

The director expressly mentioned this material inconsistency in the notice of denial; however, counsel has not addressed the discrepancy on appeal.

Furthermore, the AAO affirms the director's finding that the evidence submitted to establish that the foreign entity actually paid for the claimed interest in the U.S. company is insufficient. The petitioner submitted a large number of wire transfer request forms; however, all of the documentation which mentions the petitioning company as a recipient of funds is dated in February and March of 2010. According to the

Minutes of the Special Board Meeting of the petitioning company, all payments for the purchase of the company's stock were fully paid on or before November 6, 2009. In fact, the evidence of record includes a claim that the foreign entity acquired a total of five United States subsidiaries in 2009. Absent specific references to the petitioning company, and documentation clearly linking the funds from the foreign entity to a specific recipient, the AAO cannot assume that wire transfer transactions related to the instant petitioner and not to another claimed U.S. subsidiary.

The AAO notes that all evidence of wire transfers dated prior to November 6, 2009 consist of transfers of funds to the beneficiary's personal bank account from individuals located in the Philippines. As noted by the director, there is insufficient evidence that the foreign entity was the originator of any funds transferred for the purpose of purchasing stock or otherwise investing in the petitioning company. The petitioner has not submitted information or documentation regarding the foreign entity's bank accounts or other evidence which would make the required connection between the transferred funds and the foreign entity. The same deficiency applies to the wire transfer transactions made in both 2009 and 2010. 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)).

Further, the evidence of record does not clearly explain or document the terms of the stock purchase. Since all of the U.S. company's stock was ostensibly held by an individual, [REDACTED] it is reasonable to believe that the foreign entity would have directly purchased the stock from her, rather than transferring funds to the U.S. entity. The only evidence of a direct payment to [REDACTED] was a \$15,000 funds transfer that came directly from a personal bank account owned by the beneficiary and his spouse.

In addition, the AAO notes that the company profile submitted at the time of filing identifies the beneficiary, and not the foreign entity, as the investor providing financial backing for the U.S. company. The company profile further identifies the beneficiary as one of five individual shareholders of the company, although the document does not indicate the number of shares owned by each stock holder. Again, 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. at 591-92 (BIA 1988).

Based on the foregoing, the petitioner has not established that the U.S. and foreign entities have a qualifying relationship. 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.