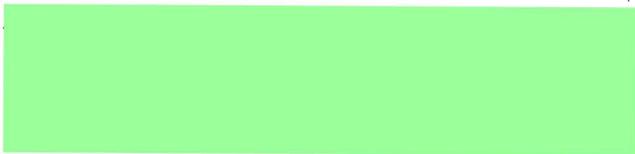


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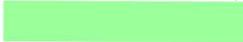


U.S. Citizenship  
and Immigration  
Services

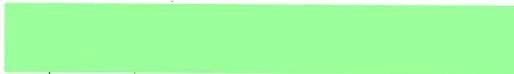


DATE: **APR 22 2013**

Office: VERMONT 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 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, Vermont Service Center, ("the director") denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B 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 was incorporated under the laws of the State of Texas on March 3, 1989. It provides import, export, and forwarding services. It claims to be a branch office of [REDACTED] a Mexican Civil Partnership. The petitioner seeks to employ the beneficiary in the United States as a classifier for an initial period of two years.

The director denied the petition, concluding that the petitioner failed to establish a qualifying relationship with the foreign firm.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof in that the evidence establishes the beneficiary's eligibility for the requested classification.

### 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 U.S. temporarily to continue rendering his or her services to the same employer or a parent, subsidiary, or affiliate of the foreign employer.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G) defines the term "qualifying organization" as 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; and

- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides in pertinent part:

- (I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries.
- (J) "Branch" means an operating division or office of the same organization housed in a different location.
- (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 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.

## II. The Issue on Appeal

The issue to be discussed in this matter is whether the petitioner established a qualifying relationship with the foreign entity that employed the beneficiary for one continuous year within the three years preceding the beneficiary's application for admission into the United States. Upon review, the AAO concurs with the director's decision to deny the petition on this issue.

On the Form I-129 (Petition for Nonimmigrant Worker) Supplement L, the petitioner noted that it has a branch relationship with the beneficiary's foreign employer. Where asked to describe the company stock ownership and managerial control of the two companies, the petitioner stated: [redacted] [the petitioner] 100% owner" and [redacted] 60% owner."

The initial record included the petitioner's Articles of Incorporation indicating the corporation had authority to issue one thousand shares, each having a par value of \$100. The petitioner's Internal Revenue Service (IRS) Forms 1120, U.S. Corporation Income Tax Return for the 2010 and 2011 years indicated that the petitioner had outstanding shares valued at \$1,000. The initial record did not identify the ownership of the outstanding shares of the petitioning company.

The record also included a resolution regarding the incorporation of [redacted] a Civil Partnership, established July 21, 1999. The incorporating documents listed the owners of the partnership as: [redacted]; [redacted]; and two minors - [redacted] and [redacted]. The documents also identified the contribution of each partner as follows: [redacted] - 36,000 pesos; [redacted] - 6,000 pesos; [redacted] - 6,000 pesos; and two minors - [redacted] - 6,000 pesos and [redacted] - 6,000 pesos. The resolution also appears to include an agreement that [redacted] will manage and control the foreign entity.

Upon review of the initial record, the director issued a request for further evidence (RFE) specifically requesting all share certificates, stock ledgers, articles of incorporation, joint venture agreements or other evidence establishing the ownership and control of the foreign entity and the U.S. entity.

In response, the petitioner provided the minutes of its stockholder's meeting dated March 30, 2007 identifying the number of shares held in the petitioner as follows:

- [redacted] - 40 shares
- [redacted] - 10 shares

- [REDACTED] – 10 shares

Upon review of the petitioner's response, the director determined that the record did not include documentary evidence establishing ownership and control of the foreign entity. The director also noted that the U.S. entity had not listed any information on its IRS Forms 1120 showing a relationship with the foreign entity.

On appeal, counsel for the petitioner asserts: [REDACTED] owns 50% of company shares and have [sic] the 100% control of business." Counsel also submits [REDACTED] November 1, 2012 affidavit. [REDACTED] declares that he established the U.S. petitioner in 1989 and that on March 30, 2007 he gifted his wife and four sons each 10 percent of the company. He declares further that an error was made by the law firm which prepared the minutes of shareholder's meeting detailing the distribution when it indicated that he only held 40 shares and that his wife and four sons held a total of 50 shares. [REDACTED] added that when the correction to the March 30, 2007 distribution was made, he purchased an additional ten shares so that now he owned 60 shares and his wife and four sons still hold a total of 50 shares. [REDACTED] declared that as the majority shareholder and owner of the petitioner, he has full control of the company and makes all decisions and controls every aspect of the company.

Counsel also provided the petitioner's notarized Unanimous Written Consent of Shareholders signed by [REDACTED] and [REDACTED] on November 1, 2012 or November 2, 2012. The affiants declared that the minutes of the shareholders meeting on March 30, 2007 was amended to reflect that the number of shares held were as follows:

- [REDACTED] – 50 shares
- [REDACTED] – 10 shares

The affiants declared further in the November 2012 Unanimous Written Consent of Shareholders that [REDACTED] subsequently acquired ten more shares of the petitioner and that the present number of outstanding shares is held as follows:

- [REDACTED] – 60 shares
- [REDACTED] – 10 shares

### III. Analysis

The petitioner has not established that it had a qualifying relationship with the foreign entity when the petition was filed. The petitioner has provided inconsistent information regarding the ownership of both the petitioner and the foreign entity. The record does not support that the petitioner and the foreign entity are branch offices as the two entities have different ownership. Rather, it appears that the two entities at most share some common owners. 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). In this matter to establish that the two entities are affiliated, the petitioner must establish that it is one of two subsidiaries both of which are owned and controlled by the same parent or individual or it is 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 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*. Without full disclosure of all relevant documents, United States Citizenship and Immigration Services (USCIS) is unable to determine the elements of ownership and control.

The only evidence the petitioner provided of its ownership prior to the adjudication of the petition was the March 30, 2007 minutes of the annual meeting of stockholders, which the petitioner now claims contained incorrect information regarding the number of shares held by [REDACTED]. Further, while the meeting minutes indicated that the petitioning company has six owners, the petitioner's statement on the L Classification supplement to Form I-129 suggested that the petitioner has a single "100% owner." 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, supra*. Moreover, based on the value of the outstanding shares reported to the IRS and the petitioner's Articles of Incorporation identifying the par value of its shares as

\$100, it appears the petitioner has issued only ten shares. Also, on the Form 1120, the petitioner indicated that no individual or estate owns 50% or more of its voting stock.

The inconsistent information regarding the petitioner's ownership and the lack of documentary evidence, such as stock certificates, the petitioner's transfer ledger, stock certificate registry, and corporate bylaws establishing ownership, undermines [REDACTED] declaration that he is the majority shareholder and has full control of the company. Moreover, [REDACTED] and the other affidavits provided on appeal are insufficient to amend the claimed ownership of the petitioner. 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).

In the resolution organizing the foreign entity, the signatories to the resolution appear to give the authority to manage and control the business to [REDACTED]. However, as observed above, the ownership of the petitioner has not been adequately documented. 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). On review, the evidence submitted raises questions regarding the nature of the purported qualifying relationship. The petitioner has not provided consistent probative evidence establishing that a qualifying relationship existed between the foreign company and the United States entity when the petition was filed. For this reason, the petition must be denied.

#### IV. Conclusion

The petition will be denied and the appeal dismissed for the above stated reason. 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 the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.