

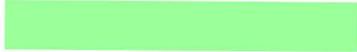
(b)(6)



U.S. Citizenship
and Immigration
Services



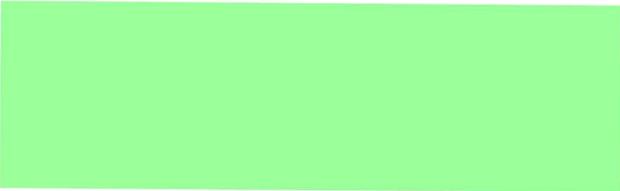
DATE: **AUG 01 2013** OFFICE: VERMONT SERVICE CENTER



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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

R Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center ("the director"), recommended denial of the nonimmigrant visa petition and certified her decision to the Administrative Appeals Office (AAO) pursuant to 8 C.F.R. § 103.4(a). The AAO will affirm the director's decision and deny the petition.

The petitioner filed the nonimmigrant petition to classify the beneficiary as an intracompany transferee (L-1A) 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 Virginia corporation engaged in textile screen printing, states that it is an affiliate of [REDACTED]. The petitioner seeks to employ the beneficiary in the position of Plant Manager for a three-year period.

The director originally denied the petition on June 9, 2009, concluding that petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity. The petitioner appealed the denial to the AAO. In a decision dated November 3, 2011, the AAO concluded that the beneficiary would be employed in a qualifying managerial capacity. However, the AAO found that the petitioner did not provide sufficient evidence to establish that the petitioner has a qualifying relationship with the claimed foreign affiliate or that the foreign entity is doing business. Accordingly, the AAO withdrew the director's decision and remanded the petition to the director for further action and entry of a new decision.

Accordingly, the director provided the petitioner with an opportunity to submit evidence to overcome the eligibility concerns addressed by the AAO. After reviewing the petitioner's response, the director recommended denial of the petition based on a finding that the petitioner failed to establish that it has a qualifying relationship with the foreign entity. The director certified her decision to the AAO for review and advised the petitioner that it may submit a brief to the AAO within 30 days. The record reflects that the petitioner has not submitted a brief 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 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.

II. Qualifying Relationship

The sole issue to be addressed is whether the petitioner established that it has a qualifying relationship with the foreign entity.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it is an affiliate of the foreign entity, [REDACTED]. Where asked to explain the company stock ownership and managerial control of each company on Form I-129, the petitioner stated:

[REDACTED] owned and controlled 100% by [REDACTED].

[REDACTED] have managerial control and own 70% of [REDACTED].
[REDACTED] has managerial control [sic]

In a letter dated April 7, 2009, counsel for the petitioner indicated that the two companies have an affiliate relationship, which he described as follows:

[REDACTED] is wholly owned (100%) by [REDACTED], [REDACTED] 60% and 40% respectively, which is a holding company for their majority ownership interest (70%) in [REDACTED]. [REDACTED] is Chairman of [REDACTED] and has a controlling interest in the Company.

In a letter dated April 2, 2009, the petitioner provided a similar description of the ownership of each company; however, the petitioner stated that [REDACTED] is its subsidiary rather than an affiliate.

The petitioner submitted the following evidence of its ownership at the time of filing: (1) a copy of its articles of incorporation dated October 17, 2002, indicating that the company is authorized to issue 25,000 shares of common stock; and (2) a copy of its stock certificate no. 17, indicating that 25,000 shares were issued to [REDACTED]. The stock certificate is not dated.

With respect to the ownership of the foreign entity, the petitioner submitted the company constitution for [REDACTED] national commercial registry, along with an English translation of the document. The document indicates that the company is owned by [REDACTED] I, LLC, a Delaware limited liability company, with a 99.9% ownership interest, and [REDACTED] also a Delaware limited liability company, which holds the remaining 0.1% interest in the company.

The petitioner also submitted evidence related to the ownership of [REDACTED] Carolina corporation established in 1995. Specifically, the petitioner submitted: (1) the company's Articles of Incorporation, indicating that the company is authorized to issue 100,000 common shares; (2) a copy of [REDACTED] 2007 Internal Revenue Service (IRS) Schedule K-1 (Form 1120S), Shareholder's Share of Income, [REDACTED] stock; and (3) a copy of a second 2007 IRS Schedule K-1 (Form 1120S) identifying [REDACTED] as the owner of 40% of the company's stock.

With respect to [REDACTED] the petitioner submitted: (1) its Certificate of Formation indicating it was established as a [REDACTED] limited liability company on June 3, 2005; and (2) a copy of its Limited Liability Company Agreement dated June 3, 2005, indicating that [REDACTED] owns a 70% interest in the company and [REDACTED] owns the remaining 30% interest.

Finally, with respect to [REDACTED] the petitioner submitted: (1) its Certificate of Formation indicating it was established as a [REDACTED] limited liability company on June 3, 2005; and (2) a copy of its limited liability company agreement indicating that [REDACTED] is its sole member.

The AAO initially remanded the matter to the director after finding that the petitioner submitted insufficient evidence of its ownership. The AAO observed that the submitted stock certificate no. 17 was not dated, and that the petitioner had failed to submit a copy of its stock certificate registry or copies of its stock certificates numbered 1 through 16. The AAO also noted deficiencies with respect to the ownership of the related foreign entity and a lack of evidence that the foreign entity continues to do business in El Salvador.

On remand the director issued a notice dated May 17, 2012 advising the petitioner of these deficiencies and requested additional evidence of ownership for the petitioner and its related entities. In response to the director's request, the petitioner, through counsel, re-submitted the corporate documents described above. The petitioner also provided a letter dated July 31, 2012 from [REDACTED] who states that he has reviewed the petitioner's corporate records and found the following:

The company was incorporated on October 21, 2002 as [REDACTED]. Subsequently, it appears that Certificate Number 1, in the amount of 100 shares was issued to [REDACTED]. This certificate was withdrawn and cancelled. It appears that initially two certificates were issued as proof of the original issuance of 100 shares. Further it appears that these shares were first redeemed and subsequently transferred to [REDACTED] c. on January 1, 2003. The corporate transfer letter reflects that these shares were transferred from [REDACTED] on December 31, 2002.

There is some question as to a certificate identified as number 17 being outstanding. My review of the ledger book indicates that the initial issuance was for only 20 initial certificates. Certificate 17 is still within the corporate Book as Certificates 3-20 have not been issued. Therefore, I do not believe that the indicated certificate 17 could be a valid certificate for the company. Regarding my opinion as to the ownership of [REDACTED], it appears that 100 shares were initially issued to [REDACTED]. The corporate records are very clear that [REDACTED]

resigned his Officer and Director positions of on January 1, 2003. On that same day, the shares for were redeemed by Inc in favor of Certificate Number 2 was issued for 100 shares to on January 1, 2003. Therefore, it is my opinion that only 100 shares of are currently outstanding which are represented by Certificate Number 2 and that these shares are entirely owned by .

The petitioner submitted a copy of its stock certificate no. 1 dated December 31, 2002, which indicates that 100 shares were issued to . The stock certificate was signed by in his capacity as president. The word "Canceled" is handwritten on the certificate. The petitioner also submitted a copy of its stock certificate no. 2, also dated December 31, 2002, indicating that was issued 100 shares.

The director subsequently re-issued the same request for additional evidence on September 27, 2012, although the record reflects that the petitioner provided a timely response to the notice dated May 12, 20012.

In response to the second notice, the petitioner submitted a letter dated October 30, 2012, in which the petitioner's president, asserted that "stock certificate 17 has never been issued by ." The petitioner's response included the following evidence:

- Copy of the petitioner's stock ledger showing the issuance of stock certificates 1 and 2 only, and indicating that the : no longer holds any ownership interest in the company.
- Copies of its stock certificates 1 through 17. Certificates numbered 3 through 17 are blank.
- A copy of its By-Laws.
- A copy of the minutes of the Initial Meeting of the Stockholders of c. dated November 26, 2002, which indicates that a subscription of stock was received from for 100 shares and that were elected directors of the corporation, with elected as president and as secretary. and signed the minutes in the capacity of "Shareholder and Director."
- A letter dated November 20, 2002 addressed to the Board of Directors of in which offered to subscribe to 100 of the company's shares.
- A letter dated January 1, 2003 addressed to the Board of Directors of in which resigned as officer and director of the company.

The petitioner's letter dated October 30, 2012 also addressed the ownership of the foreign entity as follows:

The chain of ownership for the foreign entity for tax reporting purposes. The reason for the two is that two entities are required for ownership of a company in El Salvador. and 30% by

is Chairman of the Board of Directors for and the foreign entity

The petitioner's response also included a memo dated October 11, 2012 from , which further described the ownership and was accompanied by a chart illustrating the chain of ownership of (62.5%) and his spouse (37.5%) and is owned by (75%) and (25%). The chart indicates that owns 70% of and which wholly owns the foreign entity, International.

The petitioner submitted IRS Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc. for for the 2011 tax year as evidence of its ownership by and

The petitioner also submitted Articles of Organization for limited liability company, and a partial copy of its IRS Form 1065 for the 2011 tax year, including Schedules K-1 identifying its members as

The director determined that the petitioner failed to establish that the petitioner has a qualifying relationship with the foreign entity. The director acknowledged the petitioner's claim that wholly owns the U.S. entity and holds an indirect majority and controlling interest in the foreign entity. However, the director determined that the petitioner failed to submit sufficient evidence of its ownership. Specifically, the director emphasized that the petitioner submitted a copy of its stock certificate number 17 issuing 25,000 shares to and later denied that such certificate was ever issued and submitted a blank version of the same certificate. The director emphasized that the petitioner failed to explain how the stock certificate number 17 "made it into the evidentiary record." Given this discrepancy, the director concluded that the petitioner failed to submit sufficient evidence of ownership of the petitioning company and failed to establish the claimed qualifying relationship with the foreign entity.

Upon review, the AAO will affirm the director's decision. The petitioner has not established that it has a qualifying relationship with the beneficiary's foreign 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 (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, USCIS is unable to determine the elements of ownership and control.

The record contains numerous inconsistencies with respect to the ownership of both the U.S. and foreign entities and therefore fails to support the petitioner's claim that the companies enjoy common ownership and control.

As discussed in the director's decision, the petitioner initially submitted a copy of its stock certificate number 17 indicating that [REDACTED] owns all 25,000 authorized shares of the petitioner's stock. The petitioner has subsequently denied that this stock certificate was ever issued, submitted a copy of its blank stock certificate number 17, and denied that the petitioner has ever issued more than 100 shares of stock. However, it has offered no explanation for its initial submission of a completed stock certificate which it now claims is either invalid or simply never existed in the first place. 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). 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. *Id.* at 591.

The record also contains a number of inconsistencies regarding the ownership of the foreign entity. The petitioner has consistently indicated that [REDACTED] owns a majority (70%) interest in [REDACTED] which in turn owns the foreign entity. The petitioner initially indicated that [REDACTED] owns a 60% interest in [REDACTED] while [REDACTED] owns the remaining 40%. However, in its October 2012 response to the director's RFE, the petitioner claims that [REDACTED] is the majority owner of [REDACTED] owning only 25% of the company. Given that the petitioner's claim of an affiliate relationship with the foreign entity is based on common majority ownership by [REDACTED], this is a significant discrepancy. If [REDACTED] owns only 25% of [REDACTED] then the petitioner cannot establish his indirect majority ownership of the foreign entity through the ownership chain illustrated in the record.

The petitioner has also submitted inconsistent claims regarding the ownership of [REDACTED]. The petitioner initially indicated that the company is owned by [REDACTED], but in response to the director's RFE indicates that [REDACTED] and [REDACTED] (30%). The petitioner offered no explanation for this change. 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.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine 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). In this case, the discrepancies catalogued above lead the AAO to conclude that the evidence of the petitioner's qualifying relationship with the foreign entity is not credible. Accordingly, the AAO will affirm the director's decision and deny the petition.

III. Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The director's decision dated March 14, 2013 is affirmed. The petition is denied.