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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



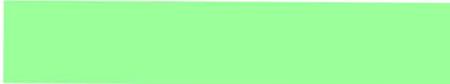
DATE: FEB 20 2013

Office: CALIFORNIA SERVICE CENTER

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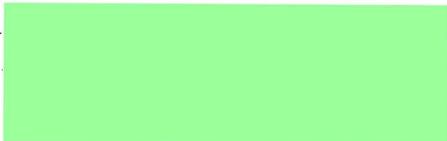


IN RE: Petitioner:  
Beneficiary:



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.

Thank you,

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

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 sustain the appeal.

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, an Illinois corporation formed in 2006, is an engineering, software development and consulting firm. It claims to be an affiliate of [REDACTED] or "the foreign entity"), located in India. The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity, as an engineering project coordinator, for an initial period of three years.

The director denied the petition, concluding that the petitioner failed to establish 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. On appeal, counsel asserts that the director misinterpreted evidence of the foreign entity's ownership and contends that the petitioner has submitted sufficient corroborating evidence of its affiliate relationship with the foreign entity.

#### 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 subsidiary or affiliate.

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[.]

\* \* \*

- (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. The Issue on Appeal**

The sole issue to be addressed is whether the petitioner established a qualifying relationship to the foreign entity. 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).

On Form I-129 Supplement L, the petitioner claimed a qualifying relationship with the foreign entity based upon "same shareholders for both companies in the same ratio," which, if corroborated by sufficient evidence, would satisfy the definition of "affiliate" at 8 C.F.R. § 214.1(l)(1)(ii)(L)(2).

The AAO notes that the director's decision addressed deficiencies in the evidence submitted to establish the ownership of the foreign entity. The evidence of record, which includes stock certificates, a stock transfer ledger, articles of incorporation, and other relevant corporate documents, establishes that the petitioning company is owned by three individuals, as follows: [REDACTED] 45.01%; [REDACTED] 9.98%, and [REDACTED] 45.01%.

With the initial petition, the petitioner submitted the following documents regarding the ownership of the foreign entity:

1. The foreign entity's share certificate number 3 issued to [REDACTED] for 4501 shares (distinctive numbers 00001 to 04501) dated May 15, 2008;
2. The foreign entity's Memorandum of Transfer(s) of Share(s) Mentioned Overleaf dated May 15, 2008 recording transfer number 1 to [REDACTED];
3. The foreign entity's share certificate number 6 issued to [REDACTED] for 998 shares (distinctive numbers 09003 to 1000) dated May 15, 2008; and
4. The foreign entity's Memorandum of Transfer(s) of Share(s) Mentioned Overleaf dated May 15, 2008 recording transfer number 4 to [REDACTED]

The director issued a request for evidence ("RFE"). The director requested a list of the owners of the foreign entity and the percentages they own, but did not request stock certificates or stock transfer ledgers for the foreign entity.

In response, the petitioner clarified that the owners and percentage of ownership for both the U.S. and foreign entities is as follows: [REDACTED] 45.01%; [REDACTED] 9.98%, and [REDACTED] 45.01%. The petitioner submitted additional evidence including, *inter alia*, the following:

1. The foreign entity's Share Transfer Form, dated May 14, 2008, recording the transfer of 4501 shares (distinctive numbers 00001 to 04501) from [REDACTED] to [REDACTED];
2. The foreign entity's Share Transfer Form, dated May 15, 2008, recording the transfer of 499 shares (distinctive numbers 04502 to 05000) from [REDACTED] to [REDACTED]; and
3. The foreign entity's Share Transfer Form, dated May 14, 2008, recording the transfer of 998 shares (distinctive numbers 09003 to 10000) from [REDACTED] to [REDACTED]

The director ultimately denied the petition, concluding that the petitioner failed to establish a qualifying relationship. In denying the petition, the director found that the record was "not clear" as to how [REDACTED] remained the owner of 4501 shares (distinctive numbers 00001 to 04501) when he

transferred the shares to [REDACTED] on May 14, 2008. The director also found that there was no evidence that [REDACTED] was the owner of 499 shares (distinctive numbers 04502 to 05000), which he purportedly transferred to [REDACTED]. No other reasons for denial were specified.

On appeal, counsel submits additional clarification and new evidence to demonstrate the qualifying relationship. Specifically, counsel clarifies that based upon the Indian Company Act of 1956, [REDACTED] was still the owner of the 499 shares on May 15, 2008 because the transfer was not entered into the register until May 15, 2008. Furthermore, counsel clarifies that [REDACTED] was originally the owner of 5000 shares as of October 6, 2006, and that his 5000 shares were subsequently split and transferred to [REDACTED] and [REDACTED].

On appeal, counsel submits new evidence including, *inter alia*, the following:

1. Copy of Indian Company Act, 1956;
2. The foreign entity's share certificate number 1, issued on October 6, 2006 to [REDACTED] for 5000 shares (distinctive numbers 00001 to 05000);
3. The foreign entity's share certificate number 2, issued on October 6, 2006 to [REDACTED] for 5000 shares (distinctive numbers 05001 to 10000);
4. The foreign entity's share certificate number 4, issued on May 15, 2008 to [REDACTED] for 499 shares (distinctive numbers 04502 to 05000);
5. The foreign entity's share certificate number 5, issued on May 15, 2008 to [REDACTED] for 40002 shares (distinctive numbers 05001 to 09002);
6. Bank receipts for a credit of 46,939 Rupees (USD \$1,611) to the account of [REDACTED] received on June 5, 2008, and a debit of 553 Rupees for accompanying fees; and
7. The foreign entity's Register of Members.

### III. Analysis

Upon review, the petitioner's assertions are persuasive. The AAO finds sufficient evidence to establish that the petitioner and the foreign entity have a qualifying affiliate relationship.

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

In the present matter, the petitioner submits a credible explanation for the perceived deficiencies noted by the director, including evidence that overcomes the director's concern regarding how [REDACTED]

remained the owner of 4501 shares (distinctive numbers 00001 to 04501) when he transferred the shares to [REDACTED] on May 14, 2008.

Furthermore, on appeal the petitioner submits additional evidence to document the foreign entity's original issuance of 5000 shares to [REDACTED] which he subsequently transferred to [REDACTED] and [REDACTED]. The petitioner submits all of the foreign entity's share certificates numbers 1 through 6, including share certificate number 1 issued to [REDACTED] for 5000 shares, as well as the foreign entity's share transfer forms and membership register.<sup>1</sup> These documents clearly document the sequence of the foreign entity's issuance and transfer of shares consistent with the petitioner's claims. These documents overcome the director's concern regarding whether [REDACTED] was the owner of 499 shares (distinctive numbers 04502 to 05000).

Overall, the record supports that the petitioner's claim that the United States and foreign entities qualify as affiliates based on their common ownership and control by the same three individuals, with each individual having the same owning and controlling the same share or proportion of each entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L)(2). Accordingly, the AAO will withdraw the director's decision and sustain the appeal.

#### IV. Conclusion

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 sustained that burden. Accordingly, the director's decision is withdrawn. The appeal will be sustained and the petition approved.

**ORDER:** The appeal is sustained.

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).