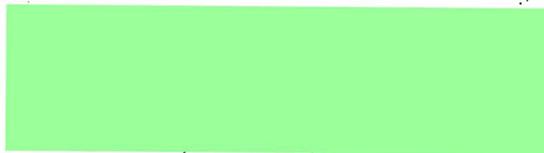




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **FEB 28 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

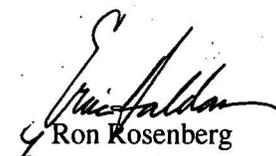


INSTRUCTIONS:

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 petition for a nonimmigrant visa. 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-1B nonimmigrant intracompany transferee with specialized knowledge 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, is an importer and wholesaler of electronic products, and claims to be an affiliate of [REDACTED] located in South Korea. The petitioner seeks to employ the beneficiary as the marketing manager of its new office in the United States for a period of one year.

The director denied the petition on, concluding that the petitioner failed to establish that the beneficiary possessed the requisite one year of continuous employment abroad with a qualifying organization within the three years preceding the filing of the petition. The petition was denied, in part, based on the petitioner's failure to submit a complete response to the director's request for additional evidence (RFE).

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 evidence of record contained sufficient evidence of the beneficiary's foreign employment, and that "additional evidence regarding the Beneficiary's prior employment abroad, such as payroll statements," should not be requested.

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.

Upon review, the AAO concurs with the director's decision and will affirm the denial of the petition. For the first time on appeal, the petitioner submits previously requested evidence for review. The submitted evidence will not be considered in this proceeding.

The director put the petitioner on notice of the required evidence and gave a reasonable opportunity to provide it for the record before the visa petition was adjudicated. See 8 C.F.R. § 103.2(b)(8). Specifically, the director requested, *inter alia*, verification of the beneficiary's one year of continuous employment abroad with a qualifying organization during the three years preceding the filing of the petition. The director specifically requested copies of the foreign entity's payroll records pertaining to the beneficiary to establish that he was employed as claimed. In response, the petitioner failed to provide the requested payroll records. Instead, the petitioner submitted a letter in response to the director's requests in which it claimed that the beneficiary had been employed abroad in a specialized knowledge position by the petitioner's affiliate since November of 2006, and submitted a certified translation of that entity's organizational chart which listed the beneficiary as an employee in the International Sales department. The director denied the petition after noting that the petitioner failed to submit the requested evidence.

On appeal, counsel for the petitioner submits the requested payroll records and additional documentation pertaining to the beneficiary's foreign employment, along with a certified English translation of each document. Counsel asserts that, according to section 32.3(b) of the U.S. Citizenship and Immigration Services (USCIS) Adjudicator's Field Manual, the regulations do not require submission of extensive evidence of the beneficiary's prior employment and that the petitioner satisfied the regulatory requirements based on the statements previously submitted.

The AAO disagrees. The regulation at 8 C.F.R. § 214.2(l)(3)(iii) states that an individual petition filed on Form I-129 shall be accompanied by 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. In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence that, in his or her discretion, is deemed necessary. Although specifically requested by the director, the petitioner did not provide the requested evidence. The petitioner's failure to submit this information cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The director appropriately denied the petition, in part, for failure to submit requested evidence, despite the petitioner's ultimate submission of the requested records on appeal.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Beyond the decision of the director, the AAO also notes that the petitioner has submitted insufficient evidence to establish that a qualifying relationship exists with the claimed foreign affiliate.

The regulation at 8 C.F.R. § 214.2(l)(3)(iii) states that an individual petition filed on Form I-129 shall be accompanied by evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations. The regulation at 8 C.F.R. § 214.2(l)(3)(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 petitioner claims that it is affiliated with the foreign entity, [REDACTED]. In relevant part, the regulation at 8 C.F.R. § 214.2(l)(3)(ii)(L) defines the term affiliate as:

- (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[.]

Specifically, the petitioner claims that [REDACTED], the foreign entity's CEO, is the sole stockholder of the petitioner and its primary source of its start-up capital. Regarding ownership of the foreign entity, the record contains a certified translation of the stock ledger/list of stockholders, which indicates that [REDACTED] owns 99.90% of the shares issued. Regarding the U.S. entity, the record contains a copy of the petitioner's Articles of Incorporation filed on March 9, 2009, which indicates that the petitioner is authorized to issue 1,000,000 common shares. The record also contains a copy of stock certificate (number 1) issued to [REDACTED] for 50,000 shares, along with a document entitled "Demand Deposit," showing an alleged deposit of \$49,995.00 into the petitioner's bank account on April 6, 2009.

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.*, 19 I&N Dec. 362. 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. Generally, 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.

In the request for evidence, the director requested additional evidence of this nature, including the foreign entity's articles of incorporation and meeting minutes discussing share ownership as well as a list of the U.S. petitioner's owners and their respective percentages of ownership. In response, the petitioner merely supplied a general statement claiming that [REDACTED] is the foreign entity's CEO and the petitioner's sole owner. The petitioner submitted no further documentation pertaining to the ownership of either company.

To establish eligibility in this case, it must be shown that the foreign employer and the petitioning entity/share common ownership and control. The record suggests that [REDACTED] owns 50,000 shares of the petitioner by virtue of the stock certificate submitted. However, the petitioner's Articles of Incorporation indicate that it is authorized to issue 1,000,000 shares. Absent additional documentation, such as the petitioner's stock ledger and minutes of relevant shareholder meetings, the AAO is precluded from finding that [REDACTED] is the petitioner's sole or majority shareholder. Likewise, absent relevant documentation pertaining to the foreign entity's ownership as requested by the director, the translated list of shareholders is insufficient to establish that [REDACTED] is the majority shareholder of the foreign entity. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As discussed previously, the regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The 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). The record contains insufficient evidence demonstrating that the petitioner and [REDACTED] are qualifying organizations. For this additional reason, the petition must be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

The petitioner is not precluded from filing a new visa petition on the beneficiary's behalf that is supported by competent evidence that the beneficiary is now entitled to the status sought under the immigration laws.

ORDER: The appeal is dismissed.