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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: JUN 10 2013 OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

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:

[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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner filed this nonimmigrant petition seeking 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 owns and operates a franchise restaurant located in Tennessee. The petitioner claims to be an affiliate of , India. The petitioner seeks to employ the beneficiary as the general manager of its restaurant for a period of two years.

The director denied the petition, concluding that the petitioner failed to establish that it has a qualifying relationship with the foreign entity. In particular, the director found that because the petitioner is a franchisee, the petitioner does not have control over the operation of the U.S. business. The director also concluded that the petitioner failed to establish that the foreign entity continues to be engaged in the regular, systematic, and continuous provision of goods and services.

The petitioner subsequently filed a total of six motions to reopen and reconsider with the director. The director dismissed all six motions.

The petitioner now files the instant appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner submits a brief and additional evidence to supplement the record.

### 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. The Issues on Appeal

The first issue to be addressed is whether the petitioner established that the foreign entity continues to be engaged in the regular, systematic, and continuous provision of goods and services. Upon review of the record, the AAO will withdraw the director's finding that the foreign entity is not engaged in the regular, systematic, and continuous provision of goods and services. The evidence in the record supports a finding that the foreign entity continues to do business as defined in the regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H).

The second and primary issue to be addressed is whether the petitioner established that it has a qualifying relationship with 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).

Upon review of the record, the AAO will withdraw the director's finding that the petitioner does not exercise control over the U.S. business operations because it is a franchisee. The evidence in the record supports the finding that the petitioner has control over the operation of the entity, regardless of the petitioner's status as a franchisee.

In general, a "franchise" is a cooperative business operation based on a contractual agreement in which the franchisee undertakes to conduct a business or to sell a product or service in accordance with methods and procedures prescribed by the franchisor, and, in return, the franchisor undertakes to assist the franchisee through advertising, promotion, and other advisory services. A franchise agreement, like a license, typically requires that the franchisee comply with the franchisor's restrictions. By itself, the fact that a petition involves a franchise will not automatically disqualify the petitioner under section 101(a)(15)(L) of the Act. When reviewing a petition that involves a franchise, the director must carefully examine the record to determine how the franchise agreement affects the claimed qualifying relationship. It is critical in all cases that the petitioner fully disclose the terms of any franchise agreement, especially as the agreement relates to the transfer of ownership, voting of shares, distribution of profit, management and direction of the franchisee, or any other factor affecting actual control of the entity. *Cf. Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986). In the context of this visa petition, 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. 593 (Comm'r 1988).

Here, a careful review of the franchise agreement and Operations Manual reflects that the petitioner retains and exercises control over the establishment, management, and operations of its business, a restaurant. The franchise agreement limits the franchisor's obligations to providing a training program and assistance to the franchisee, including periodic consultations with a representative or development agent. In contrast, the franchise agreement lists the petitioner's obligations as to sign a sublease, complete a training program, pick a location, construct, equip, and open the restaurant, and to

operate the business in compliance with the laws, governmental regulations, and the Operations Manual. The franchise agreement also states:

You will recruit, hire, train, terminate, and supervise all Restaurant employees, set pay rates, and pay all wages and related amounts, including any employment benefits, unemployment insurance, withholding taxes or other sums, and we [the owners of Subway trade name and service mark] will not have any responsibility for these matters

...

You will always indicate your status as an independent franchised operator and franchisee to others on any document or information released by you in connection with the Restaurant.

The Operations Manual provides guidance on a variety of matters, including store location, accounting and insurance, store design and décor, signage, construction, equipment, and recommended office supplies. While the franchise agreement and Operations Manual contain some limitations on the petitioner's control, these limitations do not substantially affect or negate the petitioners' control over the establishment, management, and operations of the U.S. entity.

The director's finding that the petitioner does not exercise control over the operation of the U.S. entity appears to have been based solely upon the petitioner's status as a franchisee. As stated above, the fact that a petitioner involves a franchise will not automatically disqualify the petitioner under section 101(a)(15)(L) of the Act. For the foregoing reasons, the director's finding as it relates to the petitioner's lack of control over the U.S. entity will be withdrawn.

Nevertheless, a review of the record fails to reflect that the petitioner has a qualifying relationship with the foreign entity, [REDACTED] based on common ownership and control. Accordingly, the appeal cannot be sustained.

On Form I-129, the petitioner indicated it is an affiliate of the foreign entity based upon the beneficiary's 100% ownership of the foreign entity, and his 52% ownership of the petitioner. The AAO finds sufficient evidence to establish that the beneficiary is the sole owner of the foreign entity. However, the record contains insufficient evidence to establish that the beneficiary owns 52% of the U.S. entity, which the petitioner claims is organized as a legal partnership formed under the laws of Tennessee.

In support of the qualifying relationship, the petitioner submitted the following documents: (1) Agreement for Purchase and Sale of Partnership Interest; (2) the petitioner's certificate no. 6 issued to the beneficiary for 520 partnership shares; and (3) two cashier's checks for \$12,500 each, made by the beneficiary to the petitioner. The petitioner also submitted a copy of its 2008 IRS Form 1065, U.S. Return of Partnership Income, and accompanying Schedules K, Partner's Share of Income, Deductions, Credits, etc. Upon review, and for the reasons discussed below, the documents the petitioner submitted to establish the beneficiary's claimed acquisition of 52% ownership interest in the U.S. entity are not credible or probative.

The Agreement for Purchase and Sale of Partnership Interest, dated August 21, 2009, was entered into between the beneficiary (purchaser) and [REDACTED] (sellers). The agreement states that the sellers "desire to sell half of their interest in the partnership" to the beneficiary. Specifically, the agreement states that [REDACTED] sells, transfers, and assigns to the beneficiary 26% of all her right, title, and interest in the partnership (keeping 24% ownership for herself) for the total sum of \$60,000, of which \$12,500 will be paid in certified funds. The agreement also states that [REDACTED] sells, transfers, and assigns to the beneficiary 26% of all his right, title, and interest in the partnership (keeping 24% ownership for himself) for the total sum of \$60,000, of which \$12,500 will be paid in certified funds. The agreement summarizes the ownership of the partnership, after the above transfers have taken place, as follows: (1) the beneficiary 52%; (2) [REDACTED] 24%; and (3) [REDACTED] 24%. The agreement is signed by all three parties, but not dated. The petitioner did not submit a partnership agreement or other evidence to establish the ownership structure of the partnership at the time of the beneficiary's purported purchase of a majority interest in the company.

The AAO further notes that, while the purchase agreement implies that the partnership was held 50-50 by [REDACTED] at the time of the sale, the resulting percentages do not add up based on the wording of the agreement. If each partner owned 500 partnership units, then a transfer of 26% of those units would amount to 130 shares or units being transferred by each partner to the beneficiary, rather than 260 units per partner, and the resulting ownership would be: the beneficiary, 26%, [REDACTED] 37% and [REDACTED] 37%.

The petitioner's 2008 IRS Form 1065 and accompanying Schedules, signed and dated April 30, 2009 contain information that conflicts with this claimed ownership structure. The schedules to Form 1065 reflect that the petitioner had four partners at the end of 2008: (1) [REDACTED] 25% owner; (2) [REDACTED] 25% owner; (3) [REDACTED] 25% owner; and (4) [REDACTED] 25% owner.

Therefore, the petitioner's tax return reflects that [REDACTED] has no ownership interest in the petitioner, and [REDACTED] owns only 25% of the petitioner. The petitioner's 2008 federal tax return contradicts, and makes impossible, the petitioner's assertion that the beneficiary purchased 52% ownership interest in the petitioner from [REDACTED], each of whom purportedly retained 24% ownership. In light of the above, the petitioner failed to establish that the Agreement for Purchase and Sale of Partnership Interest is an authentic and credible document. The AAO does not discount the possibility that the ownership of the partnership could have changed subsequent to the end of the 2008 tax year. However, absent probative evidence that [REDACTED] actually owned the petitioner at the time of the beneficiary's claimed purchase of a majority interest in the partnership, the Agreement for Purchase and Sale of Partnership Interest has little probative value.

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.*

In addition, the petitioner's certificate no. 6 purportedly issued to the beneficiary for 520 partnership shares is not credible or probative. The certificate is confusingly dated "August 11st, 2009" and contains the signature of only one partner. The certificate also states that the value of each share is \$20, which would represent a total purchase price of \$10,400. In contrast, the Agreement for Purchase and Sale of Partnership Interest states that the beneficiary purchased his ownership interest for a total of \$120,000. Moreover, the petitioner failed to submit certificates nos. 1 through 5, or any evidence establishing the identity and ownership interests of the other partners.

As general evidence of a petitioner's claimed qualifying relationship, one share certificate alone – particularly when a total of at least six certificates have been issued – is not sufficient evidence to establish the petitioner's ownership and control. The petitioner's certificate ledger or registry, original and amended partnership agreements, and the minutes of any relevant partnership meetings must all be examined to determine the total number of partners and partnership shares issued, the exact number issued to each partner(s), and the subsequent percentage ownership and its effect on overall 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 partnership, and any other factors 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 cashier's checks for \$12,500 each, made by the beneficiary to the petitioner, are not credible or probative of the beneficiary's claimed acquisition of a majority interest in the company through purchase of partnership shares from the company's current owners. The checks were both made to the petitioner, not to the individual sellers, [REDACTED] and the petitioner offered no explanation for this apparent discrepancy.

Another discrepancy not addressed by the director is the owner of the franchise agreement. The only copy of the franchise agreement in the record is an agreement between [REDACTED] (the [REDACTED] franchisor) and [REDACTED] (which appears to be a misspelling of [REDACTED], as franchisee. The petitioner has not submitted evidence that the transfer of this franchise agreement to the petitioning partnership has actually taken place, thus it is unclear whether this is the franchise agreement under which the petitioner is currently operating. Clause 9 of the agreement, beginning on page 10, contains provisions restricting and controlling the transfer and assignment of the restaurant, some of which would potentially impact the original franchisee's ability to give up a majority ownership interest in the restaurant.

Finally, the record contains insufficient evidence that the petitioner is a legal entity. Although the petitioner claims to be a partnership formed under Tennessee law, the petitioner submitted no evidence to establish the formation, registration, and recognition of the partnership as a legal entity in the state of Tennessee or any other U.S. state. The Agreement for Purchase and Sale of Partnership Interest does not constitute evidence that the petitioner is a legal partnership. The regulations require a "subsidiary" or "affiliate" to be a firm, corporation, or other legal entity. 8 C.F.R. §§ 214.2(l)(1)(ii)(K), (L). Neither a sole proprietorship nor a partnership is a legal entity apart from its owner or owners. *Matter of United Investment Group*, 19 I&N Dec. 248 (Comm'r 1984).

Because the director did not address the material issues regarding the petitioner's claimed qualifying relationship with the foreign entity, the AAO will remand this matter to the director for a new decision. The director should request any additional evidence deemed warranted and allow the petitioner to submit such evidence within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing discussion and entry of a new decision which, if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.