



U.S. Citizenship
and Immigration
Services

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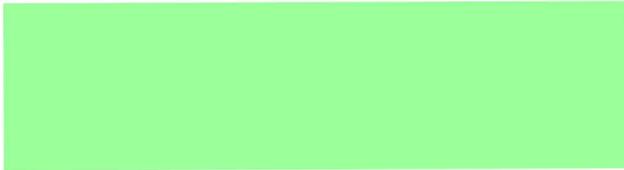
DATE: **JUN 19 2013** Office: VERMONT SERVICE CENTER

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 law was inappropriately applied by us in reaching our 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 request 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 that any motion must 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, denied the nonimmigrant visa petition. 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-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, a Delaware limited liability partnership established in July 2003, states that it operates a general practice law firm. The petitioner claims to have a qualifying relationship with [REDACTED] located in London, United Kingdom. The petitioner seeks to employ the beneficiary in the position of "Manager, Foreign Legal Services" for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the U.S. company has 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 for review. On appeal, counsel for the petitioner asserts that the director erred in denying the petition, as a qualifying relationship exists between the U.S. company and the foreign entity. Counsel submits a brief and additional evidence on appeal.

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, among other items: "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."

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.
- (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.
 - (3) In the case of a partnership that is *organized in the United States to provide accounting services along with managerial and/or consulting services* and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

(Emphasis added.)

II. ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary's foreign employer and the U.S. company are qualifying organizations. 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 organization 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).

With the sole exception of international accounting firms, the applicable regulations 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. See 8 C.F.R. § 214.2(l)(1)(ii) (defining critical terms based on ownership and control); see also *Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (Comm'r 1988); *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). 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 Int'l*, 19 I&N Dec. at 595.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 6, 2012. On the L Classification Supplement to Form I-129, the petitioner identified the beneficiary's last foreign employer as [REDACTED] and stated that the foreign and U.S. companies have an affiliate relationship based on the uniform standards and policies followed by each office. The petitioner claims that a qualifying relationship exists pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(L)(3), as it meets the affiliated partnership exception that is provided for accounting firms.

Counsel for the petitioner explains its business structure as follows:

[E]ach office of the petitioner is part of the larger [REDACTED] – recognized as a single international law firm. The organization maintains uniform standards and policies throughout the various offices, and ensures that each office reflects and promotes the [REDACTED] brand in the same way. The indicia of the organization's commonality include the following services and management practices, all of which are the same, or similar throughout our offices: name, financial and other resources and work product requirements, marketing approaches and promotional materials, website (listing all international locations) and more.

* * *

We note that petitioner [REDACTED] US is part of the larger [REDACTED]. [REDACTED] has global management structures sitting in the [REDACTED] (a Swiss Verein), including a Global Board and Global Advisory Committee, whose members are selected from the various international offices. It also has a core global leadership team, including a Global Chief Executive, Chairman, Global Chief Operating Officer, Global Chief Legal Officer, Global Chief Information Officer and Global Chief Talent Officer who assist to coordinate the members of Verein. [REDACTED] also has global operational structures, such as a Global Operations Committee and Global Risk Management Committee, also comprised on members of the various international offices. It also ensures that each office reflects and promotes the [REDACTED] brand in the same way.

The director denied the petition on March 27, 2012, concluding that the petitioner failed to establish that a qualifying relationship exists between the U.S. entity and the foreign entity. In denying the petition, the director found that the petitioner's claim to be a consulting firm, so that it might qualify as a partnership under the accounting firm standard, was insufficient. Although the petitioner may establish that it provides consulting services to its clients worldwide, the director concluded that the statute and regulation do not allow for the petitioner to solely provide consulting services; the statute and regulation require that such consulting services be in conjunction with an organization providing accounting services and marking said accounting services.

On appeal, counsel for the petitioner submits a brief clarifying the global structure of the U.S. and foreign entities. Counsel explains that although the U.S. and foreign entity do not share common ownership, they do share a master agreement that requires they maintain uniform standards and policies throughout the various offices and ensure that each office represents the firm in the same way. Counsel further reiterated that organization shares the same name, financial and other resources and work product requirements, marketing approaches and promotional materials, website, and more.

III. ANALYSIS

Upon review, the AAO does not find that the petitioner meets the requirements at 8 C.F.R. § 214.2(l)(1)(ii)(L)(3) as the law clearly states that this exception applies to accounting firms who may also provide consulting services. The law is clear in that the organization must first and foremost be an accounting firm.

The accounting firm exception was created by the Immigration Act of 1990, P.L. 101-649, which provided at section 206:

(a) *Clarification of Treatment of Certain International Accounting Firms.* – In applying sections 101(a)(15)(L) and 203(b)(1)(C) of the Immigration and Nationality Act, in the case of a partnership that is organized in the United States to provide accounting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

On its face, the statute is clear and need not be interpreted further. Statutory interpretation “begin[s] with the language of the statute.” *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002); *see also United States v. Abuagla*, 336 F.3d 277, 279 (4th Cir. 2003) (“Because the statutory language is clear, our inquiry is finished.”).

However, the associated legislative history further clarifies that the exception was intended only for the accounting industry:

The L visa has provided multinational corporations the opportunity to rotate employees around the world and broaden their exposure to various products and organizational structures. This visa has been a valuable asset in furthering relations with other countries but the Committee believes it must be broadened to accommodate changes in the international arena. First, the bill allows accounting firms access to the intracompany visa. Long-established international firms providing accounting services along with consulting and managerial expertise adhere to the same quality standards, techniques and methodology which are associated with an intracompany transferee, but because of the different ownership structures have been denied use of the L visa. This provision would allow the benefits of the L Visa for this particular industry, based on agreements which indicate participation in the control of the worldwide coordinating organization, thus allowing the smoother interchange of personnel.

H.R. Rep. 101-723(1) (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418; *see also* 57 Fed. Reg. 14791, 14791 (April 23, 1992) (incorporating the exception for partnerships that perform accounting services into the regulations at 8 C.F.R. § 214.2(1)(1)(ii)).

While counsel's assertions are reasonable, and the AAO recognizes that many international law firms may maintain a similar organizational structure, it would strain the plain language of the statute to extend the affiliate exception to international general practice law firms. The clear and unambiguous language of the statute and regulations cannot support such a result; as created by Congress, section 206 of the Immigration Act of 1990 limits the exception to "certain international accounting firms."

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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.