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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



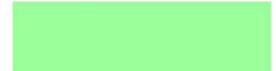
U.S. Citizenship  
and Immigration  
Services



DATE: JUN 20 2013

Office: VERMONT SERVICE CENTER

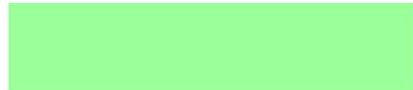
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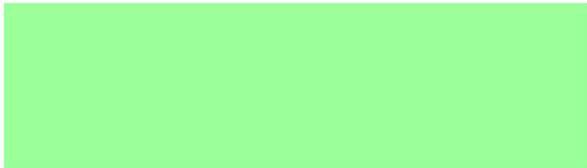
Petitioner:

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

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**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 sustain appeal and approve the petition.

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 New York corporation established in October 2006, states that it operates an express courier and e-commerce business. The petitioner is a subsidiary of [REDACTED] China. The petitioner seeks to employ the beneficiary in the position of vice president for a period of three years.

The director initially approved the petition for a three-year period commencing on October 1, 2008. The director issued a Notice of Intent to Revoke ("NOIR") the approved petition on August 10, 2011, advising the petitioner that USCIS had been notified that it did not appear that the qualifying foreign entity was continuing to conduct business. The director ultimately revoked the approval of the petition on May 16, 2012, concluding that the petitioner failed to establish that the U.S. company and the foreign entity were engaged in the regular, systematic, and continuous provision of goods and services, and as such, that a qualifying relationship exists between the U.S. and foreign entities.

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 contends that the evidence presented in response to the NOIR was sufficient to overcome the director's reasons for revocation and that the director's conclusions upon final revocation evolved from those initially presented in the NOIR. 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:

- (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[.]

The issue addressed by the director is whether the petitioner established that the foreign entity is doing business, as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(H):

*Doing business* means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

## II. ISSUE ON APPEAL

The sole issue to be addressed is whether the petitioner established that the foreign entity doing business abroad in accordance with the regulations cited above, thus retaining a qualifying relationship with the U.S. petitioning company.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 25, 2008. The petitioner is a New York corporation established in October 2006; it indicates that it operates an express courier and e-commerce business. The petitioner's initial supporting evidence included: (1) payroll records for the foreign entity from April 2008 to July 2008; (2) the by-laws of the U.S. company dated November 18, 2006 indicating that the U.S. company is 100% owned and controlled by the foreign entity; (3) a stock certificate dated November 8, 2006 indicating that the foreign entity owns 100% of the U.S. company's shares; (4) a Resolution Memo of the U.S. company dated May 28, 2007 indicating that the foreign entity owns 100% of

the U.S. petitioning company and that the U.S. petitioning company owns 100% of [REDACTED] (5) a Resolution Memo of the foreign entity dated May 25, 2007 indicating that the foreign company owns 100% of [REDACTED] and as of July 1, 2007, transferred 100% ownership of [REDACTED] to its subsidiary, the U.S. petitioning company; (6) an application for funds transfer dated May 23, 2007 indicating that the foreign entity initiated a transfer of \$200,000 to the U.S. petitioning company; (7) a bank statement indicating that a transfer of \$199,980 was pending in May 2007; (8) IRS Form 941 of the U.S. petitioning company for the third and fourth quarters of 2007 and the first and second quarters of 2008; (9) 2006 IRS Form 1120 for the U.S. petitioning company, d/b/a [REDACTED] indicating that the company was 100% owned by the foreign entity in China; (10) 2007 IRS Form 1120 for [REDACTED] indicating that the company was 100% owned by the foreign entity in China; (11) 2007 IRS Forms W-2 of the U.S. petitioning company for 16 different employees; (12) business licenses for the foreign entity from April 2006 and December 2006; (13) a tax registration certificate and organization code certificate for the foreign entity renewed in January 2007; (14) articles of organization for the foreign entity for December 2006, April 2007, and May 2007; (15) a Contract for Commercial Lease of the foreign entity from April 2006 to March 2007; (16) photos of the foreign entities office space in Shandong, China; and (17) copies of multiple business contracts for the foreign entity beginning January 2007.

The director initially approved the petition for a three-year period commencing on October 1, 2008. The director issued a Notice of Intent to Revoke ("NOIR") the approved petition on August 10, 2011, advising the petitioner that USCIS had been notified that it did not appear that the qualifying foreign entity was continuing to conduct business.

In response to the NOIR, counsel for the petitioner submitted: (1) balance sheets of the foreign entity for 2008 to July 2011; (2) income statements of the foreign entity for 2008 to July 2011; (3) multiple invoices to the foreign entity from April 2011 to September 2011; (4) a current list of employees at the foreign entity; (5) company registration updates of the foreign entity with the Chinese government; and (6) photos of the foreign entity's employees.

The director ultimately revoked the approval of the petition on May 16, 2012, concluding that the petitioner failed to establish that the U.S. company and the foreign entity were engaged in the regular, systematic, and continuous provision of goods and services, and as such, that no qualifying relationship exists between the U.S. and foreign entities. The director found that the internally generated financial statements for the foreign entity have limited probative value as they are representations of its management.

On appeal, counsel asserts that the foreign entity and the U.S. petitioning company have been doing business abroad and in the United States. Counsel provides additional evidence such as: (1) an updated registration after annual inspection of the foreign entity, dated May 11, 2012, indicating that the Chinese government recognizes that the foreign entity exists; (2) telephone bills of the foreign entity for four different accounts dated May 18, 2012; (3) telephone service invoices of the foreign entity for four different accounts dated August 2011 through March 2012; (4) Housing Accumulation Funds Remittance of the foreign entity dated August 2011 through May 2012; (5) Special Voucher for Bank Transfer Entrustment of the foreign entity dated August 2011 through May 2012; (6) Special Collection Voucher for Social Insurance Premium, Shandong Province of the foreign entity dated August 2011 through May 2012; (7) invoice to the foreign entity from Shandong Province Local Administration of Taxation dated February 2012 to May 2012; (8) Tax Payment Certificates of the foreign entity dated October 2011 and February 2012; (9) a lease agreement for

the U.S. petitioning company from March 1, 2012 to February 29, 2016; (10) IRS Form 941 of the U.S. petitioning company for the fourth quarter of 2011 and the first quarter of 2012; (11) 2010 IRS Form 1120 of the U.S. petitioning company indicating that it is 100% owned by the foreign entity in China; (12) photos of the U.S. petitioning company's office and employees in the United States; and (13) photos of the foreign entity's office and employees in China.

Upon review, the evidence in the record is persuasive and establishes that the foreign entity is engaged in the regular, systematic and continuous provision of goods and/or services.

The petitioner and foreign entity need only establish that its business is regular, systematic and continuous. The record shows that the foreign entity is engaged in the provision of goods and services by providing audio-visual products and consulting. In the NOIR, the director questioned the foreign entity's current business status and the petitioner responded with evidence establishing that the foreign entity was doing business as of the date of filing the petition. In the final revocation, the director determined that the evidence presented was insufficient and thus concluded that the foreign entity was not doing business and the required qualifying relationship between the two entities was non-existent.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, 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.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (discussing "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Here, the submitted evidence is relevant, probative, and credible. The AAO concludes that the foreign entity is doing business and a qualifying relationship exists between the two entities.

### III. 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 met that burden. Accordingly, the director's decision dated May 16, 2012 is withdrawn and the appeal will be sustained.

**ORDER:** The appeal is sustained.