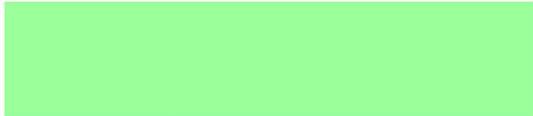


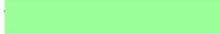
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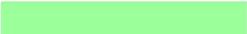
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

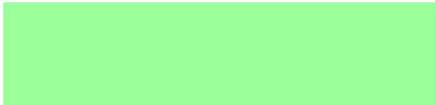


DATE: **MAR 12 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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 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 sole proprietorship located in California, is engaged in the automobile dent removal business. The petitioner claims to be the parent of [REDACTED] located in the United Kingdom. The petitioner seeks to employ the beneficiary as a Dent Removal Master Technician for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possessed specialized knowledge or that he would be employed in a position requiring specialized knowledge.

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 contends that the decision of the director was erroneous, and that the beneficiary is, and will be, employed in a specialized knowledge according to the Act.

#### 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.

**I. The Issue on Appeal**

**A. Specialized Knowledge Capacity in the United States**

The first issue to be addressed is whether the petitioner established that the beneficiary possesses specialized knowledge and employed in the United States in a specialized knowledge capacity.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The petitioner is a sole proprietorship in the State of California claiming to have purchased a company in the United Kingdom, [REDACTED]; whose founder is the beneficiary. The beneficiary is offered as holding specialized knowledge in certain dent removal technology and techniques. The petitioner states that the beneficiary will be working as a Dent Removal Master Technician for the petitioner focusing on painless dent removal in order to avoid costly body work and repainting that might otherwise result when foreign cars are dented. The petitioner provided a description of the beneficiary's role with the foreign entity, as follows:

[The beneficiary] is a talented operator, and has developed at [REDACTED] special metal-forming techniques for dealing with large dents, and a high familiarity with the foreign cars that make up our luxury clientele. He has found a way to make specialized "fogboards" that are superior to the ones available in the trade, and has perfected a "spiral" technique for removing dents. In addition, he has developed a special software system, [REDACTED], that interfaces with customers who can go on the [foreign employer] website and get an instant quote on a dent repair case.

The director issued a Request for Evidence ("RFE") requesting that the petitioner provide, *inter alia*, (1) an explanation of how the beneficiary's duties were different from those of other petitioner workers and other U.S. employees in this type of position; and (2) a detailed explanation of the systems, products or techniques that the beneficiary has specialized knowledge in and how they are different from those being utilized by other companies in the dent removal industry.

In response to the RFE, the petitioner provided a detailed explanation of the specialized techniques and software application the petitioner claims the beneficiary developed personally, and how these techniques and technology are different from those used by other dent removal companies in the United States. The petitioner provided that it purchased the beneficiary's company, [REDACTED], in order to gain ownership of the beneficiary's paintless dent removal techniques and software technology. The petitioner further asserted that the beneficiary's expertise will greatly increase the efficacy of the petitioner's paintless dent removal; particularly with newer model luxury aluminum body automobiles which the petitioner offers as being largely unfamiliar to the US auto body industry. The petitioner also stated that it planned on using the beneficiary to teach its technicians and to license the beneficiary's software in order to expand its business. The AAO notes that it will not discuss the aforementioned techniques in further detail due to proprietary concerns on the part of the petitioner.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a specialized knowledge position. The director reasoned that the record did not reflect that the beneficiary possessed and advanced level of knowledge of the claimed process or products of the petitioning entity, noting that the specialized knowledge in question was held by the beneficiary himself and not the petitioning entity as required by the Act.

On appeal, counsel asserts that the director erroneously denied the petition based on the misplaced conclusion that the beneficiary possessed the specialized knowledge at issue and not the petitioning entity. Counsel maintains that the petitioner specifically bargained for and acquired the techniques, systems and software developed by the beneficiary. The petitioner offers various references to British law which it claims illustrate that the proprietary information of the beneficiary was fairly purchased by the petitioner; since this information was created by an employee of a British company (the beneficiary) and such is generally deemed owned by the employer. Further, counsel refers to the purchase agreement on the record whereby the petitioner purchased the foreign employer, along with all of its proprietary information, including that of the beneficiary. Additionally, counsel states that the beneficiary's knowledge is specialized since he invented the

techniques and software; and therefore, such proprietary information is not readily available in the marketplace; is materially different from that of competitors; and is essential to the petitioner's productivity and competitiveness.

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or that he would be employed in the United States in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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 order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition. In the present matter, counsel asserts that the beneficiary qualifies pursuant to both prongs.

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is advanced or special, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner has not provided sufficient supporting documentation to determine whether the beneficiary holds specialized knowledge of the company's products and their application in international markets or that he has an advanced knowledge of the company's processes or procedures. Although the beneficiary has provided a sufficiently detailed explanation of the processes and techniques the beneficiary is claimed to have invented, the petitioner has not provided sufficient supporting evidence or documentation to determine with certainty whether this knowledge is special or advanced. Indeed, beyond the statements of the petitioner, the petitioner has produced little to support its assertions that the techniques and software claimed as invented by the beneficiary are unique or uncommon; proprietary; and not utilized widely elsewhere in the

industry. For instance, despite offering that the beneficiary's software is trademarked, the petitioner has not produced sufficient supporting documentation related to this software, such as screen shots; proof that the software is trademarked; or other such evidence that would support a conclusion that the beneficiary developed, or the petitioner owns, a software application. In fact, in apparent contradiction, the beneficiary is offered as having no experience in information technology, and no other explanation is provided surrounding the invention and development of this claimed software. Additionally, no other supporting documentation is provided to establish that the four other techniques and processes supposedly held by the petitioner are in fact owned by the petitioner, such as evidence of patents or trademarks. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The absence of evidence of a definitive right of ownership in the claimed innovations on the part of the petitioner casts doubt on whether they exist as claimed; particularly since the petitioner maintains that it paid a nominal £200 (or approximately \$332 as of the claimed date of purchase) for the entirety of the foreign employer and its stated innovations. The claimed purchase of the whole of the beneficiary's business and its claimed proprietary information for such a nominal amount casts serious doubt on whether the petitioner did indeed purchase, and the beneficiary invented, four innovative painless dent removal techniques and a software application related thereto. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. INS*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Additionally, even if the record were sufficient to establish that the beneficiary invented four innovative painless dent removal techniques and a software application; it is also not sufficient to establish that the petitioner owns this proprietary information. For example, establishing that a British company likely garners ownership in proprietary information of its employees does not establish that such ownership in proprietary information would transfer to a purchasing United States corporation or partnership. As noted, the petitioner has not produced any supporting documentation to show the proprietary information is owned by the petitioner; such as patents and trademarks or the specific transference of this proprietary data. Further, it is questionable whether a sole proprietorship such as the petitioner, which has not been shown on the record to exist as a legal entity in the United States, can purchase a foreign entity and its proprietary data. As noted in the I-129 Petition for a Non-immigrant Worker, the petitioner offers itself as a sole proprietorship wholly owned by Mr. and Mrs. [REDACTED] doing business as [REDACTED]. The existence of the petitioner (d/b/a [REDACTED]) as a sole proprietorship is further supported on the record by the petitioner's submission of IRS Form 1040 U.S. Individual Income Tax Returns reflecting the joint filing of [REDACTED] and [REDACTED], which further reflects their conducting business as [REDACTED] as a sole proprietorship in Schedule C. The petitioner claims it purchased the foreign employer [REDACTED] pursuant to a "Business Agreement" executed by and between the petitioner [REDACTED] and Mr. [REDACTED] (the beneficiary), the sole owner of the foreign employer [REDACTED]. However, the viability of this transaction is left in doubt, as according to the record, the petitioner does not exist as a legal entity, casting serious doubt on whether it can purchase a foreign corporation and its proprietary data. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Further, the record also suggests that other employees in the United States could be readily trained in these techniques without substantial cost or hardship on the part of the petitioner. For example, the foreign employer's website (a screenshot of which was produced on the record) notes that "paintless dent removal is a specialized craft requiring twelve months of training and practice to acquire," suggesting that the petitioner could readily train others in the techniques it claims to own without substantial cost or hardship. Also, this statement directly on the foreign employer's website (managed by the beneficiary) casts doubt on the uniqueness of the beneficiary's claimed knowledge. In sum, the totality of the evidence does not support a conclusion that the beneficiary holds the specialized knowledge as claimed due to a lack of evidence beyond the petitioner's own assertions. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966).

For the reasons discussed above, the totality of the evidence submitted fails to establish that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal must be dismissed.

#### B. Qualifying Relationship

Beyond the decision of the director, the petitioner has also not established that a qualifying relationship exists between the petitioning entity and a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G).

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.

As noted in the above definition, a parent company is defined as a firm, corporation, or other legal entity. Black's Law Dictionary defines a "legal entity: as "A body, other than a natural person, that can function legally, be sue or be sued, and make decisions through agents; a typical example is a corporation." See *Black's Law Dictionary* 58 (7th Ed., West 1999). 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).

However, in the current matter and as noted in the I-129 Petition for a Non-immigrant Worker, the petitioner offers itself as a sole proprietorship wholly owned by Mr. and Mrs. [REDACTED] doing business as [REDACTED]. The existence of [REDACTED] as a sole proprietorship is further supported on the record by the petitioner's submission of IRS Form 1040 U.S. Individual Income Tax Returns reflecting the joint filing of [REDACTED] despite the director's request that the petitioner submit the petitioner's company income tax documentation, including applicable IRS Forms 1120, 2220, 4562, 5472, or 1065 related to corporate or partnership earnings. 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). Further, the failure to submit this documentation casts further doubt on whether the petitioner exists as a legal entity. Indeed, the preponderance of the evidence noted above establishes that [REDACTED] does not exist as a legal entity separate and apart from the natural persons [REDACTED]. Therefore, the petitioner does not meet the definition of a parent consistent with the Act, which requires that a parent be a legal entity. 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).

Further, as previously noted, the petitioner claims it purchased the foreign employer [REDACTED] pursuant to a "Business Agreement" submitted on the record executed by and between the petitioner ([REDACTED]) and Mr. [REDACTED] (the beneficiary), the sole owner of the foreign employer [REDACTED]. The aforementioned transaction is determinative of establishing the claimed parent and subsidiary relationship by and between the petitioner and the foreign employer. However, serious doubt is cast on the viability of the transaction given that [REDACTED] has not been shown to exist as a legal entity, and is in fact openly offered as a sole proprietorship. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). As such, the preponderance of the evidence shows that the petitioner could not have purchased the foreign employer, since the petitioner does not exist as a legal entity. Therefore, the petitioner has not established that the petitioner is the parent of the foreign employer, and that they are qualifying organizations consistent with the Act.

In sum, the petitioner has failed to establish the required qualifying relationship between the petitioner and the foreign employer due the discrepancies on the record related to the petitioner existence as a legal entity and the purchase of the foreign employer by the petitioner. For this additional reason, the appeal will be dismissed.

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 reviews appeals on a *de novo* basis).

#### IV. Conclusion

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

**ORDER:** The appeal is dismissed.