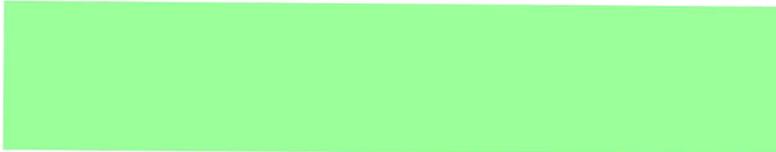
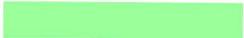


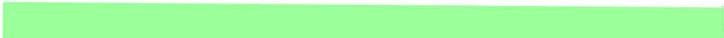
(b)(6)



U.S. Citizenship  
and Immigration  
Services

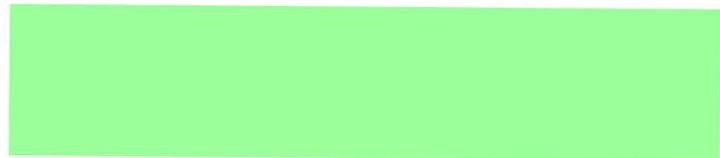


DATE: **MAR 21 2013** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner:  P  
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)

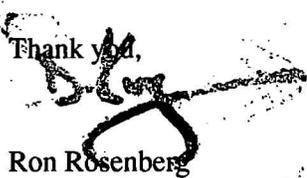
ON BEHALF OF PETITIONER:



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. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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 employ 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 states it is engaged in the distribution and sale of [REDACTED]. Petitioner claims to do business in the State of Texas and to have a number of "branch offices" worldwide, including one in Mexico that employs the beneficiary in a managerial or executive capacity. The petitioner seeks to employ the beneficiary as a sales manager and trainer in the United States for three years.

The director denied the petition, concluding that the petitioner failed to establish a qualifying relationship consistent with 8 C.F.R. § 214.2(l)(1)(ii)(G)(2), reasoning the petitioner did not have sufficient control over the U.S. entity. The director based his decision, in part, on concluding that the petitioner was a franchisee of [REDACTED] and therefore not a branch office pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G)(2).

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 asserts that the director erred by: 1) finding that the petitioner, a sole proprietor, does not have sufficient control over the U.S. business; 2) concluding the petitioner is a franchise without evidentiary support for this conclusion; and 3) applying a test not supported by case law, statute or regulations to determine whether there is a qualifying relationship between the petitioner and foreign employer.

The AAO agrees, in part, with the argument of counsel. The director incorrectly determined that the petitioner was a franchisee. An association between a foreign and U.S. entity based on a franchise agreement or a license is insufficient to establish a qualifying relationship for L-1 purposes. *See* 8 C.F.R. § 214.2(l)(1)(ii) (defining the term "qualifying organization"); *see also* 9 FAM 41.54 N7.1-5. Agreements that govern licensing, royalties, or franchise rights and obligations are based on contract. A franchise, like a license, typically requires that the franchising organization comply with the franchisor's restrictions, without actual ownership and control of the franchise organization. *Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm'r 1970) (finding that no qualifying relationship exists where the association between two companies was based on a license and royalty agreement that was subject to termination since the relationship was "purely contractual"). However, in the instant matter, the petitioner has not claimed to be a franchisee nor submitted any evidence to warrant this conclusion. In fact, the petitioner is claiming to be a U.S. entity with branches in several foreign countries, including Mexico, from which it is petitioning to transfer the beneficiary. As such, the petitioner's relationship to [REDACTED], from which it appears to have a license to sell products, is not relevant to the issue of determining a qualifying relationship.

The determinative issue to be discussed in the present matter is whether the petitioner has established that a qualifying relationship exists between the petitioner and the foreign employer of the beneficiary. 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). The AAO finds there is not sufficient evidence on the record to establish that the petitioner exists as a legal entity or parent office, or that the claimed foreign employer exists as a branch office; thereby preventing a finding that there is a qualifying relationship between the U.S. employer and a foreign employer pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G).

As previously stated, the petitioner claims to do business in the State of Texas and to have a number of "branch offices" worldwide, including one in Mexico that employs the beneficiary in a managerial or executive capacity. In defining the nonimmigrant classification, the regulations do specifically provide for the temporary admission of an intracompany transferee "to the United States to be employed by a parent, *branch*, affiliate, or subsidiary of [the foreign firm, corporation, or other legal entity]." 8 C.F.R. § 214.2(l)(1)(i) (emphasis added). The regulations define the term "branch" as "an operating division or office of the same organization housed in a different location." 8 C.F.R. § 214.2(l)(1)(ii)(J). USCIS has recognized that the branch office of a foreign corporation may file a nonimmigrant petition for an intracompany transferee. *See Matter of Kloetti*, 18 I&N Dec. 295 (Reg. Comm'r 1981); *Matter of Leblanc*, 13 I&N Dec. 816 (Reg. Comm'r 1971); *Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm'r 1970); *see also Matter of Penner*, 18 I&N Dec. 49, 54 (Comm'r 1982)(stating that a Canadian corporation may not petition for L-1B employees who are directly employed by the Canadian office rather than a United States office). When a company establishes a branch in the United States or elsewhere, that branch is bound to the parent company through common ownership and management. However, the branch, whether in the United States or in a foreign country, must be shown to be more than a mere agent, but doing business as defined by law. The term "doing business" is defined in the regulations as "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." 8 C.F.R. § 214.2(l)(1)(ii)

Additionally fundamental to this nonimmigrant classification, the petition must be filed by a United States importing employer in order to meet the definition of "qualifying organization." *See* 8 C.F.R. 214.2(l)(1)(ii)(G)(2). Section 214(c)(1) of the Act. In the present case, the petitioner continually refers to the claimed U.S. employer as a sole proprietorship. For instance, counsel states in the appeal brief, "[p]etitioner is a sole proprietorship and has been operating as a sole proprietorship selling herbal products distributed by [redacted] since 1985." A sole proprietorship is a business in which one person personally owns all of the assets, personally owes all the liabilities, and operates the business in his or her personal capacity. Black's Law Dictionary 1520 (9th Ed. 2009). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual proprietor. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm'r 1984). As in the present matter, if the petitioner is doing business as a sole proprietorship, with no separate legal entity in the United States, there is no U.S. entity to employ the beneficiary.

The petitioner has not submitted sufficient evidence to establish the claim that it is a U.S. legal entity or employer with many foreign branches abroad, including one in Mexico from which it is transferring the beneficiary. The petitioner, through his own admission and that of counsel, is operating as a sole proprietorship. Based on the record, the petitioner appears to be operating as an independent sales person

with a license to sell a certain brand of products with loose affiliations to sales representatives, including the beneficiary, in foreign countries. The petitioner has not submitted any evidence to establish that [REDACTED] exists as a legal entity, as claimed by the petitioner and required by the Act; including certificates of incorporation, articles of incorporation, corporate tax documents, stock certificates, or other such similar evidence denoting the existence of a legal entity. Indeed, the petitioner has not claimed to be incorporated or otherwise in existence as a legal entity in the State of Texas, where the claimed U.S. employer and parent company operates, nor in any other state.

Also, the record is replete with examples of the petitioner referring to himself, and not the claimed U.S. employer, when conducting business. No reference is made to the U.S. employer in any of the provided tax documentation; letters sent by the petitioner; letters received from [REDACTED] reflecting commission payments; the petitioner's business cards; nor anywhere else in the record. Indeed, the primary place in the record where the claimed U.S. employer is mentioned is in letters sent from the petitioner and counsel directly in support of the petition to USCIS. 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)). Additionally, 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).

Further, the petitioner has not provided any supporting evidence that there are operating branches or affiliates within various foreign countries as claimed, including the office in Mexico proffered in this matter. The petitioner only vaguely refers to the claimed offices as "distributorships," and has failed to submit any evidence establishing his ownership over any foreign entities or branch offices. Indeed, the petitioner has not provided any evidence to show that the beneficiary works for the claimed branch of the U.S. employer in Mexico. For instance, probative evidence of such an office could include, but not be necessarily limited to, the following: 1) a business license establishing that the U.S. corporation is authorized to engage in business activities in the foreign country or a specific locality therein; 2) copies of foreign tax documentation for the foreign branch; 3) Employer's Quarterly U.S. Federal Tax Return, listing the branch office employees; 4) copies of a lease or office space in the foreign country or other credible evidence establishing the physical existence of a foreign branch office; or 4) any other documentation demonstrating that the petitioner has a foreign branch office, such as correspondence between the parent or branch, or documentation proving the formation of the branch office by the parent. Additionally, nothing has been submitted to show that the Mexican branch is doing business as required by 8 C.F.R. § 214.2(l)(ii)(G)(2), or conducting "regular, systematic, and continuous provision of goods and/or services" to establish it as a qualifying organization. The mere presence of an agent or office abroad is not sufficient. *Ibid.* Again, 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)).

Counsel references in her appeal brief the *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988), and uses this case as a basis to establish that the petitioner owns and controls the U.S. and foreign employers. The AAO does not find counsel's argument persuasive. Indeed, the proffered case establishes that ownership and control are factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593. However, in the present matter, ownership and control of the entities is not at issue. The very existence of the claimed entities is the determinative issue, and they have not been shown to exist. An analysis of ownership and control of entities is premised on the actual existence of such legal entities.

Therefore, based on the current record, the petitioner has not established that it exists as a U.S. firm, corporation, or other legal entity as required by 8 C.F.R. § 214.2(l)(1)(ii)(G), nor that the claimed branch in Mexico exists. For these reasons, 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 reviews appeals on a *de novo* basis).

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.

**ORDER:** The appeal is dismissed.