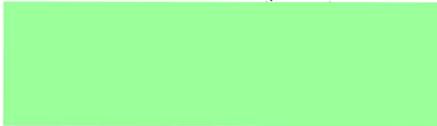
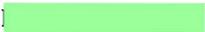


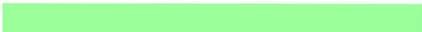


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 29 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 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 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 claims to be an affiliate of [REDACTED] (“the foreign entity”), located in Venezuela.

The director initially approved the petition on August 21, 2011.

On November 23, 2011, the director revoked the petition, concluding, in relevant part, that the petitioner failed to establish that a qualifying relationship exists between the petitioner and the foreign entity. In revoking the petition, the director acknowledged that the beneficiary was the majority owner of the petitioner and the holding company [REDACTED]. However, the director concluded that “a holding company does not generate any type of income, thus is not doing business as defined in 8 CFR 214.2(l)(1)(ii)(G). Thus, it can not [sic] be used to establish a qualifying relationship.”

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, the petitioner asserts that the director erred by refusing to consider the beneficiary’s ownership interest in the holding company.

On January 29, 2013, the AAO issued the petitioner a Notice of Intent to Deny (NOID), affording the petitioner thirty three days to submit additional evidence in rebuttal to a proposed denial. To date, the AAO has not received a response to the NOID. The AAO will affirm the director's decision to revoke the approval of the petition, and will dismiss the 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.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

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. Analysis

Qualifying Relationship

Upon review of the record, the AAO finds that the petitioner failed to establish a qualifying relationship between the petitioner and the foreign entity.¹

As evidence of the qualifying relationship, the petitioner submitted, *inter alia*, the following documents:

1. Articles of Incorporation and Bylaws for [REDACTED] filed on August 26, 1999, reflecting that the two shareholders are the beneficiary (650 shares) and [REDACTED] (350 shares);
2. Minutes of the Special Shareholders' Meeting of the foreign entity, held on October 22, 1999, in which the beneficiary and [REDACTED], present on behalf of [REDACTED], amended the foreign entity's bylaws and appointed themselves as Directors. In the minutes, [REDACTED] is represented as "the sole shareholder of [the foreign entity] and holder of 50,000 shares of said corporation";
3. Agreement dated October 25, 1999 by and between [REDACTED] and his spouse [REDACTED] ("seller") and [REDACTED] ("buyer"), in which the seller agrees to sell to buyer 50,000 shares "which represent one hundred percent of the Capital Stock" of the foreign entity. In this agreement, seller "represents and warrants that he is the sole shareholder" of the foreign entity; and
4. Agreement dated October 25, 1993 by and between [REDACTED] and her husband [REDACTED] ("seller") and the foreign entity ("buyer"), represented by [REDACTED] and [REDACTED], acting as President and Vice President, respectively, of the foreign entity.

In consideration of the above, the record contains insufficient evidence to establish that [REDACTED] owns 100% of the foreign entity. In particular, the 1993 purchase agreement indicates that the foreign entity has two owners: [REDACTED] who were the President and Vice President, respectively, of the foreign entity. However, the October 25, 1999 purchase agreement in which [REDACTED] purchased the foreign entity indicates that the foreign entity was purchased from [REDACTED] and his spouse [REDACTED]. There is no objective documentation establishing that [REDACTED] and his spouse [REDACTED] were the "sole" shareholders of the foreign entity. Notably, the petitioner did not submit any copies of the foreign entity's stock certificates and stock ledger.

As general evidence of a petitioner's claimed qualifying relationship, stock or membership certificates, the corporate stock or membership certificate ledger, stock certificate registry, corporate bylaws, operating agreement and the minutes of relevant annual shareholder or member meetings must all be examined to determine the total number of shares or membership units issued, the exact number issued to the

¹ As discussed in the NOID, the petitioner established that the director erred in finding that a holding company cannot be used to establish a qualifying relationship because it does not generate income. Nevertheless, for the reasons discussed *infra*, the petitioner failed to establish a qualifying relationship to the foreign entity.

shareholders or members, and the subsequent percentage ownership and its effect on corporate control. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

In addition, although the agreement to purchase the foreign entity from [REDACTED] and [REDACTED] was dated October 25, 1999, the special shareholders' meeting in which the beneficiary and [REDACTED] on behalf of [REDACTED] amended the foreign entity's bylaws and appointed themselves as directors of the foreign entity was held on October 22, 1999, three days *prior* to the date of the purchase agreement. The petitioner failed to explain how the beneficiary and [REDACTED] on behalf of [REDACTED] had the authority to amend the bylaws and appoint the directors of the foreign entity, when they were not yet the legal owners of the foreign entity.

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 the NOID, the petitioner was advised of the above-discussed insufficiencies and discrepancies. The petitioner was afforded thirty three days in which to submit additional evidence. To date, the petitioner has not responded to the NOID. The petitioner has failed to meet its burden of proof in establishing eligibility in these proceedings.

Employment in managerial or executive capacity

Upon review of the record, the petitioner failed to establish that it can support the beneficiary in a primarily managerial or executive capacity. A review of the instant record as well as the record of proceedings contained in the petitioner's subsequent petition on behalf of the beneficiary ([REDACTED]) ("the combined record") raises significant questions regarding the true nature, size, and scope of the petitioner's operations.

The combined record reveals that the petitioner is associated with several other organizations sharing the same business activities, directors and employees, and office space as the petitioner. Specifically, these associated organizations include [REDACTED] which confusingly is doing business as [REDACTED] LLC. As evidence that the petitioner is doing business, the petitioner submitted copies of business management agreements, contracts, bank statements, invoices, emails, and other documents pertaining to the above associated organizations. A review of publicly available state databases confirms that each associated organization is a separate legal entity. Based upon the documentary evidence, the AAO cannot determine the size and scope of the petitioner's business.

In the NOID, the AAO advised the petitioner of the above-discussed insufficiencies and discrepancies. The petitioner was afforded thirty three days in which to submit additional evidence, specifically,

evidence clarifying and establishing the nature, size, and scope of the petitioner's operations as well as the operations of each and every associated organization, evidence explaining its relationship to the above associated organizations, and ultimately, evidence establishing that the petitioner can support the beneficiary in a full-time managerial or executive capacity. The petitioner was also advised to submit evidence establishing that it has secured sufficient physical premises to support its operations, considering that several of the associated organizations appear to share the same office space. To date, the petitioner has not responded to the NOID. The petitioner has failed to meet its burden of proof in establishing eligibility in these proceedings.

III. Conclusion

The appeal will be 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, that burden has not been met.

ORDER: The director's decision to revoke the approval of the petition is affirmed. The appeal is dismissed.