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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: **OCT 24 2013** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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-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 Wisconsin limited liability company, states that it engages in the manufacturing of packing equipment. On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that it is a subsidiary of [REDACTED] located in Belgium. The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity, as a "regional sales/service manager", for an initial 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, the petitioner concedes that the existing relationship between the U.S. company and the foreign entity does not meet the requirements for visa eligibility and states that it has established a new company with the proper parent-subsidiary relationship required for the requested nonimmigrant classification. The petitioner submits a brief statement and additional evidence on appeal, along with a new Form I-129, Petition for a Nonimmigrant Worker, on behalf of the newly established company.

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.

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).

At the time of filing the petition on July 17, 2012, the petitioner indicated that it is a subsidiary of the beneficiary's Belgian employer. The petitioner stated that the foreign entity is privately owned by [REDACTED] and U.S. company is owned by [REDACTED]

In response to the director's request for evidence (RFE) issued on July 27, 2012, the petitioner submitted a Partnership Agreement between [REDACTED] and the foreign entity, indicating that the partnership would be conducted under the name [REDACTED]. According to the terms of the agreement, Mr. [REDACTED] owns a 70% share of the partnership and "bears a 100% financial share of the profits and loss" for the partnership. The agreement is dated November 1, 2010.

The director denied the petition based on a finding that the evidence did not support the petitioner's claim that it is a subsidiary with the beneficiary's foreign employer or that the two companies otherwise have a qualifying relationship.

On appeal, the petitioner has conceded that its existing relationship with the foreign entity does not meet the requirements of 8 C.F.R. § 214.2(l)(1)(ii). In support of the appeal, the petitioner submits a brief statement addressing its qualifying relationship with the foreign entity as follows:

Our company was established in 2010 and our increased success requires support from our Parent company in Belgium.

Establishing the company under the structure we did in 2010 does not reflect on the correct definition of a Parent/Subsidiary relationship. After review with our Accountant and Attorney, we have made decision [sic] to establish a new US company to support this requirements;

This company owned by the Parent company in Belgium; with 70% shares, and the company own 30% of the shares. With this new company controlled by the Parent company in Belgium, we are expecting that we qualify with the correct relationship arrangement.

We hope that you will reconsider the decision under these circumstances and we are ready to submit a new I-129 Petition under the new company name supported by last three years financial statements from the Parent company in Belgium, showing the financial grounds are available to support this company and the applicant while he will be working in the US.

This support from our Parent company is crucial for our success in North America, and we hope to have demonstrated our willingness and effort to qualify to the requirements by this new company establishment.

On appeal, the petitioner submits a new Form I-129 on behalf of the new company, . Although it appears that the new company is a subsidiary of the foreign entity, it was established on October 10, 2012, 12 days after the denial of the underlying petition. As such, the qualifying relationship established by the new company cannot be considered in this proceeding. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

The petitioner has acknowledged that it does not have a qualifying relationship with the foreign entity. Accordingly, the appeal will be dismissed.

The petitioner's request to amend the petition on appeal by submitting a new Form I-129 for a new company is not properly before the AAO. The AAO does not accept new Form I-129 filings. The regulations at 8 C.F.R. § 214.2(l)(7)(i)(C) state:

The petitioner shall file an amended petition, with fee, at the service center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e. from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

The petitioner's request that the AAO consider the new Form I-129 petition on appeal is, therefore, rejected. The petitioner must file the new petition with the service center in accordance with the instructions on the Form I-129.

III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.