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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: APR 04 2014

OFFICE: CALIFORNIA 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. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

Ren 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 sustain the appeal.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), 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 Washington corporation established in March 2012, states that it engages in "software and database services." The petitioner claims to be a subsidiary of [REDACTED] located in [REDACTED]. The petitioner seeks to employ the beneficiary as the vice president of its new office in the United States.

The director denied the petition concluding that the petitioner failed to establish that it has a qualifying relationship with a 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, counsel for the petitioner asserts that the petitioner provided sufficient evidence to establish that the U.S. company is wholly owned by the foreign entity. The petitioner submits a brief and additional evidence in support of 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.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

II. ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the United States and foreign entities are qualifying organizations.

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.

The petitioner stated on the Form I-129 that it is a subsidiary of [REDACTED] located in New Zealand. Where asked on the Form I-129 to describe the stock ownership and managerial control of each company, the petitioner stated "[the foreign entity] (New Zealand) owns 100% of [the petitioner]."

The director denied the petition, concluding that the petitioner failed to establish that it had a qualifying relationship with a foreign entity, noting that the foreign entity failed to transfer the necessary capital contribution in exchange for ownership in the U.S. company. The director found that there was no documentary evidence that, at the time certificate number one was issued, the petitioner received monies from the foreign entity for the 1,000 shares. The director observed that the petitioner did not submit any wire transfer receipts indicating that the foreign company transferred the necessary capital contribution in exchange for ownership in the U.S. company, and therefore, failed to establish that a qualifying relationship existed at the time of filing.

On appeal, counsel for the petitioner contends that the foreign entity owns the U.S. company in that it had already funded the U.S. company with \$10, the par value of shares issued, on January 24, 2013, and had transferred an amount exceeding the par value on March 13, 2013, prior to filing the petition. The foreign entity then proceeded to transfer a total in excess of \$50,000 prior to responding to the RFE. Counsel further contends that the evidence of wire transfers in excess of the shares' par value was submitted in response to the RFE, but the director failed to mention the detailed [REDACTED] statement in its decision.

On appeal, the petitioner submits a copy of its RFE response, a second copy of the U.S. company's bank account statement reflecting the wire transfers from the foreign entity, and a letter from [REDACTED] explaining the wire transfer process from the foreign entity's bank account in New Zealand to the petitioner's bank account in the United States.

Upon review, the AAO finds that the record is persuasive in establishing that the petitioner is a wholly owned subsidiary of the foreign entity, thus the existence of a qualifying relationship.

In the instant matter, the petitioner submitted sufficient evidence to establish that it issued the foreign entity 1,000 shares of stock prior to filing the petition. Although the original share certificate number one is not

dated, the U.S. company's "Organizational Consent Action of Directors in Lieu of Organizational Meeting," dated March 30, 2012, and its stock ledger both indicate that the shares were issued March 30, 2012. When the petitioner was made aware of the incomplete share certificate, it reissued a completed certificate and updated the stock ledger appropriately. The petitioner then submitted sufficient evidence to show that it had provided capital contributions to the U.S. company in exchange for ownership prior to filing the petition. The foreign entity provided the shares' par value of \$10 in January 2013 and an additional \$19,959.55 on March 13, 2013.

In her decision, the director failed to acknowledge receipt of the U.S. company's bank account statement reflecting the wire transfers from the foreign entity and stated that the petitioner failed to document that the foreign entity transferred the necessary capital contribution in exchange for ownership in the U.S. company. The petitioner provided sufficient information to establish that the foreign entity is the parent of the U.S. petitioning company.

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 petitioner has established that a qualifying relationship exists between the U.S. and foreign 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 April 29, 2013 is withdrawn and the appeal will be sustained.

ORDER: The appeal is sustained.