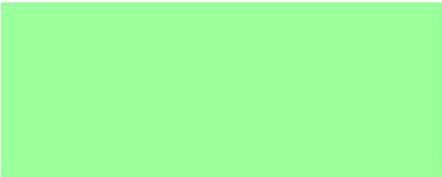
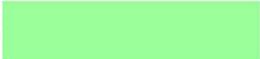


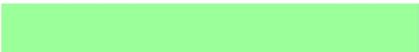


U.S. Citizenship  
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Services

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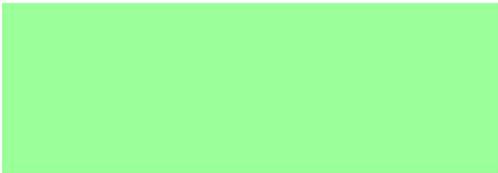


DATE: **APR 24 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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 (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,

  
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 the Form I-129, Petition for a Nonimmigrant Worker, seeking to employ 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 Delaware corporation established in January 2006, states that it operates as a "software solutions provider to high tech manufacturing." The petitioner claims to be an affiliate of [REDACTED] located in India. The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity, as an associate functional architect, for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the United States and foreign entities are qualifying organizations.

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 states that the regulations do not require identical ownership, but that the ownership and control be the same group of individuals in approximately the same shares when establishing an affiliate relationship. Counsel does not submit any additional evidence on 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 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.

(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. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner has established that the United States and foreign entities 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 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 petitioner filed the Form I-129 on June 17, 2013. On the L Classification Supplement to Form I-129, the petitioner identified the beneficiary's last foreign employer as [REDACTED] and stated that the companies have an affiliate relationship.

In a letter dated June 1, 2013, the petitioner described the relationship between the foreign and U.S. entities as follows:

. . . both companies are majority owned and controlled by [REDACTED] and [REDACTED]. Specifically, Mr. [REDACTED] and Mr. [REDACTED] each own 50% of the total shares of [the petitioner]. Thus, together they own 100% of the company. These same two individuals own, directly and indirectly, 99.43% of [the foreign entity]. [The foreign entity] has a total of 52,800 shares. [REDACTED] owns directly 17,500 shares, [REDACTED] owns directly 17,500 shares, and [the petitioner] owns 17,500 shares. The remaining 300 shares of [the foreign entity] is owned 150 each by two individuals.

Since [REDACTED] and [REDACTED] own 100% of [the petitioner] (50% each) they indirectly own 17,500 shares of [the foreign entity], or 8,750 share each [*sic*]. Thus, Mr. [REDACTED] and Mr. [REDACTED] each have ownership and control of 26,250 shares each of [the foreign entity]. Therefore, they each own 49.7% of [the foreign entity]. Together they own 99.4% of [the foreign entity] and 100% of [the petitioner]. Therefore, both companies are controlled by the same two individuals in like amounts and would qualify as an affiliate company.

The petitioner submitted its "Second Amended and Restated Certificate of Incorporation," dated January 13, 2006, stating that the U.S. company is authorized to issue a total of 50,000,000 shares of common stock with a par value of \$.001 per share. The petitioner also submitted an "Action by Unanimous Written Consent of the Board of Directors of [The Petitioner]," dated March 14, 2013, stating that the issued and outstanding shares of the U.S. company, as of the start of 2011, is [REDACTED] certificate number four – 5,666,500 shares; [REDACTED] – certificate number five – 5,666,500 shares; [REDACTED] – certificate number six – 10,695,519 shares; and [REDACTED] – certificate number seven – 10,695,519 shares.

The petitioner submitted its stock ledger, which illustrates its share distributions as follows:

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<sup>1</sup> The AAO notes that there are several variations in the spelling of this name throughout the record. This variation is not material in this matter.

- [REDACTED] 1/28/97; Original Issue; Cert. No. [NONE]; No. of Shares 500; Amount Paid \$500.00; Notes: Lost Certificate
- [REDACTED] 1/28/97; Original Issue; Cert. No. [NONE]; No. of Shares 500; Amount Paid \$500.00; Notes: Lost Certificate
- [REDACTED] 12/15/98; Original Issue; Cert. No. [NONE]; No. of Shares 500; Amount Paid \$500.00; Notes: Lost Certificate (No Affidavit of Lost Stock Certificate received)
- [REDACTED] 9/13/06; [REDACTED] Re-Issuance; Cert. No. 4; No. of Shares 5,666,500; No. of Shares Transferred 500; Amount Paid \$499.50; Stock split/original 500 shares cancelled
- [REDACTED] 9/13/06; [REDACTED] Re-Issuance; Cert. No. 5; No. of Shares 5,666,500; No. of Shares Transferred 500; Amount Paid \$499.50; Stock split/original 500 shares cancelled
- [REDACTED] 9/13/06; Original Issue; Cert. No. 6; No. of Shares 10,695,519; Notes: Conversion of outstanding balance of promissory note
- [REDACTED] 9/13/06; Original Issue; Cert. No. 7; No. of Shares 10,695,519; Notes: Conversion of outstanding balance of promissory note
- [REDACTED] [NO DATE]; Transferred from [REDACTED] Cert. No. [NONE]; No. of Shares 5,666,500; No. of Shares Transferred 500; Amount Paid \$499.50; Notes: Stock split/original 500 shares cancelled (The corporate records contain no evidence of the issuance of this stock certificate. The Board confirmed the cancellation of these shares by Action of Unanimous Written Consent dated March 13, 2013.

The petitioner then submitted copies of share certificate numbers four through seven as described above.

The director issued a request for additional evidence ("RFE") on June 27, 2013, instructing the petitioner to submit evidence of a qualifying affiliate relationship between the U.S. company and the foreign entity.

The petitioner submitted a letter from the foreign entity, dated July 2, 2013, illustrating the foreign entity's share distributions as follows:

- [REDACTED]; No. of Shares 150
- [REDACTED] No. of Shares 150
- [REDACTED] No. of Shares 17,500
- [REDACTED] No. of Shares 17,500
- [The Petitioner]; No. of Shares 17,500

The petitioner also submitted seven documents titled, "Register of Members and Share Ledger" of the foreign entity that are illegible and appear to have redacted information.

In response to the RFE, counsel for the petitioner submitted a letter describing ownership of the U.S. company and the foreign entity as stated above in the petitioner's letter submitted in support of the petition. Counsel went on to explain that the regulations require that the two legal entities be owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. Counsel asserted that the regulations do not require that the exact same ownership be established, but that an approximate same share is, thus the ownership of 49.7% of the foreign entity and

50% of the U.S. company would represent an approximate same share ownership for both [REDACTED] and [REDACTED].

The director denied the petition on July 18, 2013, concluding that the petitioner failed to establish that it has an affiliate relationship with the foreign entity. In denying the petition, the director found that although it appears that [REDACTED] and [REDACTED] each own approximately the same shares in each company, the 300 shares (.6%) of the foreign entity belonging to "Others" indicate that the companies are not owned by an identical group of individuals who each own a proportionate share of each organization. The director further found that the evidence fails to support a finding that both organizations are owned and controlled by the same individual or by an identical group of individuals who each own a proportionate share of each organization. Further, the director found that the evidence fails to show that an individual or identical group of individuals has effective *de jure* or *de facto* control of both organizations.

On appeal, counsel for the petitioner simply states:

The Service denied the Petition finding that the same two individuals own approximately the same shares in each company, but that the foreign entity had .6% of its shares owned by others indicated that the companies are not owned by an identical group of individuals [*sic*].

The regulations do not require identical ownership, but that the ownership and control be the same group of individuals in approximately same shares. The relationship between [the petitioner] and the foreign entity satisfies this requirement as the US Company is owned 100% by two individuals (equal share) and the foreign entity is owned 99.4% by the same two individuals (equal shares) so the control of both companies is by the same group of two people in similar proportions. The remaining .6% of the foreign company is owned by others, but does not represent any control over the foreign entity.

Neither counsel nor the petitioner submitted a brief or additional evidence in support of the appeal.

Upon review, the petitioner has not established that it has a qualifying affiliate relationship with the foreign entity.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In the instant matter, the record clearly indicates that the petitioning U.S. company does not maintain a qualifying "affiliate" relationship with the foreign entity. The evidence indicates that four individuals and one company own the foreign entity. The record further indicates that two individuals own the petitioning company in the United States. Accordingly, the two entities are not "owned and controlled by the *same group*

*of individuals*, each individual owning controlling approximately the same share or proportion of each entity . . ." 8 C.F.R. § 214.2(l)(1)(ii)(L)(2)(emphasis added). In addition, there is no parent entity with ownership and control of both companies that would qualify the two as affiliates. Although counsel claims that the U.S. company is directly wholly-owned by two individuals equally, and the foreign entity is 49.7% directly owned and 49.7% indirectly (by way of 50/50 ownership of the U.S. company who is the named owner of this 49.7%) owned by the same two individuals equally, this indirect relationship does not constitute a qualifying relationship under the regulations to establish majority ownership. Again, although the regulations do not require the exact same share ownership, it does require that the same "group of individuals" share an approximate same proportion of ownership in each company.

Based on the evidence submitted, the petitioner has not established that a qualifying relationship exists between the U.S. company and the foreign entity. Accordingly, the appeal will be dismissed.

### 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.