



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUL 01 2014 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:

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 California Service Center Director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an 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 California limited liability company, established on February 9, 2005, is an engineering consulting firm. The petitioner seeks to employ the beneficiary as its vice president of public relations and project development for a three-year period.

The director denied the petition, finding that the petitioner failed to establish that a qualifying relationship exists between the petitioner and 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. On appeal, counsel asserts that the petitioner is a subsidiary of the foreign entity.

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, petition for nonimmigrant worker, 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.

* * *

(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. Facts

The sole issue to be addressed in this proceeding is whether the petitioner established that there is a qualifying relationship between the petitioner and the foreign entity.

In support of the instant Form I-129, Petition for a Nonimmigrant Worker, the petitioner included a letter explaining that Mr. [REDACTED] owned a majority of the foreign entity's stock and a 90% interest in the petitioner, and concluded that the petitioner was a subsidiary of the foreign entity.

To establish Mr. [REDACTED] as the foreign entity's majority shareholder, the petitioner provided the following documentation: 1) the foreign entity's Articles of Incorporation authorizing 100,000 shares of stock; 2) a certified statement dated June 22, 2010, from the foreign entity's corporate secretary listing five current shareholders including Mr. [REDACTED] who had paid for 4,375 shares of a total 6,250 paid shares; 3) an affidavit dated August 12, 2010 from the foreign entity's secretary verifying the shareholders' and directors' agreement to increase the authorized shares of the entity to three million authorized shares; 4) a May 14, 2013 letter from the foreign entity's certified public accountant verifying that the foreign entity has five shareholders; and 5) a General Information Sheet (GIS) for 2012 submitted to the Security and Exchange Commission for the [REDACTED] by the foreign entity shows that Mr. [REDACTED] subscribed to and/or paid for 525,000 of the foreign entity's shares or 70% of the foreign entity's total shares currently issued or subscribed. Therefore, the petitioner has shown that Mr. [REDACTED] is the foreign entity's majority shareholder.

In regard to ownership of the petitioning company, the petitioner asserted that the Mr. [REDACTED] owns a 90% interest in the company and that [REDACTED] owns the remaining 10%. In support of the claim, the petitioner provided its April 15, 2005 operating agreement that indicates Mr. [REDACTED] and Mr. [REDACTED] contributed a total of \$200,000 to the company in exchange for their respective interest percentage.

The petitioner also provided numerous documents including employee lists and corporate brochures relating to the foreign entity, the petitioner and a third related entity located in Canada. The petitioner refers to itself as a multi-national corporation and considers the petitioner and the Canadian entity to be subsidiaries of the foreign entity.

In a request for evidence (RFE), the director instructed the petitioner to provide additional documentation to establish that the foreign entity and the petitioner have a qualifying relationship. Specifically, the director requested documents such as stock purchase agreements, stock certificates, stock ledger, proof of capital contribution, and federal income tax returns to show that the foreign entity owns the petitioner.

In a letter responding to the RFE, counsel for the petitioner reiterated that Mr. [REDACTED] is the foreign company's shareholder holding 70% of the foreign entity's stock and refers to the previously provided documents in the record. Counsel stated that Mr. [REDACTED] "provided the initial income to establish and operate" the petitioner through the foreign entity. In support of its claim, the petitioner provided bank statements and ten bank transfer documents demonstrating the foreign company's continued support of the petitioner. Further, counsel asserts that the foreign company and the petitioner share: the same

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name, (Mr. [REDACTED] initials), the same director/CEO (Mr. [REDACTED]), and some personnel and resources (operating agreement).

In response to the RFE and to establish Mr. [REDACTED] 90% ownership of the petitioner, the petitioner provided membership certificates issued to Mr. [REDACTED] representing a 90% interest and a chart showing the comparable ownership of foreign entity, the petitioner and the Canadian entity, discussed above.

The director denied the petition, concluding that the petitioner failed to establish that the foreign entity and the petitioner had a qualifying relationship. In denying the petition, the director determined that the evidence provided did not establish a parent/subsidiary or an affiliate relationship between the two entities.

On appeal, counsel maintains that a parent/subsidiary relationship between the foreign entity and the petitioner exists. Counsel asserts that the courts have held that a majority stock ownership in both companies is sufficient to prove a qualifying organization and that it has provided sufficient evidence to establish ownership. *Matter of Tessel, Inc.*, 17 I&N Dec 631 (AAC 1981). Furthermore, counsel relies on *Matter of Church of Scientology Int'l*, to assert that other factors to determine whether a parent/subsidiary relationship exists such as a common name, regular sharing and exchanging or personnel, cross directorship, sharing of technical, financial and research skills, and size and general recognition of organization.

In support of the appeal, the petitioner provided a document from the foreign entity's corporate secretary certifying that Mr. [REDACTED] owns 70% of the foreign company. The petitioner also submitted completed membership interest certificates representing Mr. [REDACTED] 90% interest in the petitioner.

III. Analysis

Upon review, counsel's assertions are persuasive. The petitioner has submitted sufficient evidence to establish that the petitioner and the foreign entity have a qualifying relationship.

As cited by counsel, the court in *Matter of Tessel* determined that a majority stock ownership in both companies is sufficient for the purposes of establishing a qualifying relationship. In the *Tessel* decision, the beneficiary solely owned 93% of the foreign corporation and 60% of the petitioning organization, thereby establishing a "high percentage of common ownership and common management" It was further determined that "[w]here there is a high percentage of ownership and common management between two companies, either directly or indirectly or through a third entity, those companies are 'affiliated' within the meaning of that term as used in section 101(a)(15)(L) of the Act." *Id.* at 633. The facts in the present matter are similar to the facts in the *Matter of Tessel* because the petitioner claims that Mr. [REDACTED] owns 70% of the stock in the foreign entity and 90% of the interest in the petitioner.

On appeal, the petitioner provided properly completed membership certificates reflecting Mr. [REDACTED] 90% interest in the petitioner to corroborate previously submitted documents listing Mr. [REDACTED] as the holder of 90% of the company's interest. Furthermore, the foreign entity ownership documentation, along with the certification submitted on appeal, clarifies Mr. [REDACTED] ownership share in the foreign entity. Mr. [REDACTED] initial stock holdings in the foreign entity combined with stock added in 2010 are

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consistent and the evidence is sufficient to establish that Mr. [REDACTED] is the majority owner and controls both the foreign entity and the petitioner.

Despite the director's determination that the petitioner's evidence was insufficient to establish that both companies are majority owned and controlled by the same individual, we find that the petitioner has provided sufficient documentation and has overcome shortcomings with additional documentation submitted on appeal.

IV. 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, the petitioner has sustained that burden. Accordingly, the director's decision dated June 18, 2013 is withdrawn and the petition is approved.

ORDER: The appeal is sustained.