



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 02 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: 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,

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 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, an Ohio corporation established in November 1983, states that it engages in manufacturing replacement parts and service for the can making industry. The petitioner claims to be the parent company of [REDACTED] located in the UK. The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity, as a field service supervisor, for a period of two 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, the petitioner states that its counsel made an error in stating that [REDACTED] wholly owns the U.S. company but a parent/subsidiary relationship exists between the U.S. and foreign entities. The petitioner submits only a letter 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 April 3, 2013. On the L Classification Supplement to Form I-129, the petitioner identified the beneficiary's last foreign employer as "[REDACTED]" The petitioner stated that the companies have a parent/subsidiary relationship.

In a letter dated March 20, 2013, the petitioner stated that the foreign entity is a majority owned subsidiary of the U.S. company. The petitioner submitted the U.S. company's Articles of Incorporation indicating that the U.S. company is authorized to issue 750 total shares of stock.

The petitioner submitted its IRS Form 1120, U.S. Corporation Income Tax Return, for 2011. The 2011 Form 1120 at Statement 2, lists the company's officers as [REDACTED] owning 50% of the U.S. company's shares, and [REDACTED] owning the remaining 50% of the U.S. company's shares. The 2011 Form 1120 at Schedule K-1, also indicates that [REDACTED] owns 50% of the U.S. company's shares, and [REDACTED] owns the remaining 50% of the U.S. company's shares.

The petitioner submitted a power point presentation titled, [REDACTED], which states on the first slide, that [REDACTED] purchased the U.S. company on July 1, 2012. The petitioner submitted a document titled, Lease and Option to Purchase, dated July 1, 2012, where the U.S. company leases premises from [REDACTED], with the option to purchase the premises at a later date.

The petitioner also submitted a line and block chart for the foreign entity identifying [REDACTED] as 80% active owner of the foreign entity and [REDACTED] as 20% active owner of the foreign entity. The chart also lists [REDACTED] as "admin" and [REDACTED] as "accountant." The record further includes two undated Stock Transfer Forms showing [REDACTED] intent to transfer 200 shares of the foreign entity to [REDACTED] and another showing [REDACTED] intent to transfer 600 shares of the foreign entity to [REDACTED]. Although each of the Stock Transfer Forms is undated, the petitioner attached a processed check to [REDACTED] for \$2,524.25 on January 30, 2013, and a processed check to [REDACTED] for \$10,096.98 also on January 30, 2013.

The director issued a request for additional evidence ("RFE") on April 11, 2013, instructing the petitioner to submit evidence of a qualifying relationship between the U.S. company and the foreign entity.

In response to the RFE, counsel for the petitioner stated that "since [REDACTED] owns 100% of [the petitioner] and 80% of [the foreign entity], this should be sufficient to evidence a qualifying relationship."

The petitioner submitted a document titled, Option Agreement, dated July 1, 2012, between [REDACTED] and [REDACTED] and [REDACTED], as Shareholders. The purpose of the agreement "is to provide a means whereby [REDACTED] may purchase from Shareholders all outstanding capital stock of the Company from the Shareholders provided certain conditions are achieved as set forth" in the agreement. The agreement states that [REDACTED] will be employed by the U.S. company as its president and chief executive officer, pursuant to an employment agreement, also dated July 1, 2012. The Option Agreement does not include a signature page or a copy of the employment agreement referenced throughout.

The petitioner submitted an affidavit from [REDACTED] dated June 27, 2013, explaining the ownership of the foreign entity as follows:

1. I was the majority shareholder holding 800 shares of [the foreign entity] until January 30, 2013. [REDACTED] was the minority shareholder holding 200 shares of [the foreign entity] until January 30, 2013. . . .
2. On January 30, 2013, [REDACTED] purchased 600 of the 800 shares of [the foreign entity] I owned for \$10,096.98. On that same day, Mr. [REDACTED] purchased all of [REDACTED] 200 shares of [the foreign entity] for \$2,524.25. . . .
3. With the purchase of these shares, a total of 800 shares, Mr. [REDACTED] became the owner of 80% of [the foreign entity] and I maintain 200 shares and 20% ownership of [the foreign entity].
4. There was no written stock purchase agreement between Mr. [REDACTED] and myself. We agreed to these terms orally.

The affidavit goes on to state that the new owners of the foreign entity changed the name from [REDACTED] to [REDACTED] and changed the authorized number of shares from 1000 to 100. The new Certificate of Incorporation shows that [REDACTED] owns 80 shares and [REDACTED] owns 20 shares of the foreign entity.

The director denied the petition on July 17, 2013, concluding that the petitioner failed to establish that it has a qualifying parent/subsidiary relationship or an affiliate relationship with the foreign entity. In denying the petition, the director found that the evidence failed to show that the U.S. company is the parent of the foreign entity because it was not shown that the U.S. company owns the foreign entity. The director further found that the Option Agreement fails to demonstrate that [REDACTED] owns the U.S. company, thus failing to show 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.

On appeal, the petitioner submits a letter, written by [REDACTED] addressing the qualifying relationship as follows:

I purchased [the petitioner] on July 1, 2012 from the original owners Mr. [REDACTED] and Mr. [REDACTED]. When my attorney . . . filed the petition for [the beneficiary] on my behalf, he filed his original brief in error. He understood that I own [the petitioner]. I purchased the business from [REDACTED] and [REDACTED] in a 100% owner financing agreement. I have a five year note with the ownership to pay for the business. Technically, I run the entire operation, however the previous owners hold the stock until the entire balance is paid off. I agreed to pay 6 million dollars for this business, and so far through July 2013, I have paid \$770,000.00 toward the total loan balance.

[The foreign entity], was owned by [REDACTED] and [REDACTED] for years previous to my purchase of [the petitioner]. [REDACTED] and [REDACTED] have had this business relationship for years. . . . I purchased [the foreign entity], basically because I wanted one brand name globally to represent [the petitioner]. Therefore, for Mr. [REDACTED] business in the UK, he still has 20% of the firm to permit him to file the required tax paperwork in the UK. [The foreign entity] and



now [redacted] [sic] has always been a subsidiary of [the petitioner], as all of their income is paid to them out of our Cincinnati office.

Upon review, the petitioner has not established that it has any qualifying 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 "parent/subsidiary" or "affiliate" relationship with the foreign entity. The evidence indicates two individuals, [redacted] and [redacted] own the U.S. company and two different individuals, [redacted] and [redacted], own the foreign entity. As described above, the U.S. company has not acquired any ownership over the foreign entity, thus negating a parent/subsidiary relationship.

Additionally, 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). There is also no parent entity with ownership and control of both companies that would qualify the two as affiliates. Although there is an Option Agreement stating that Lacey controls the U.S. company as its president and CEO and is in the process of purchasing 100% of the shares of the U.S. company, the transaction has not been completed.

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.