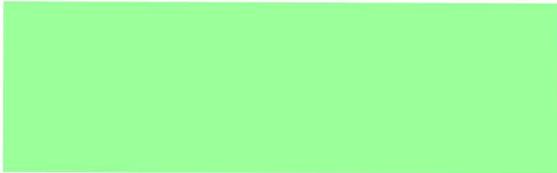
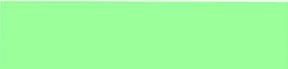


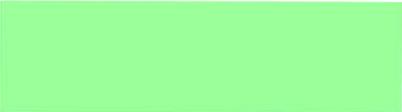


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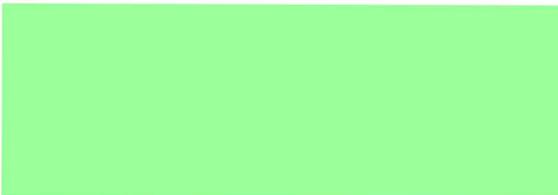


DATE: **JUN 16 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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 ("the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), 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, an Oregon corporation, states that it will operate an international logistics services business. It claims to be a subsidiary of [REDACTED] Ltd., located in China. The petitioner seeks to employ the beneficiary as the president of its new office in the United States for a period of one year. The beneficiary was admitted to the United States in B-2 nonimmigrant status on March 16, 2013. Accordingly, the petitioner requested that he be granted a change of status and extension of stay.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary 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.

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 asserts that the beneficiary worked for two different qualifying organizations abroad from February 1, 2012 until March 16, 2013 before coming to the United States and therefore has the required one year of continuous full-time employment.

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 a 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 regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) defines "intracompany transferee" as:

An alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

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[.]

* * *

(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 established that the beneficiary 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.

A. Facts

The petitioner filed the Form I-129 on August 16, 2013. The petitioner stated on the Form I-129 that the beneficiary had been employed by [REDACTED] Ltd. [REDACTED] its Chinese parent company, since July 2012. It provided a payroll record indicating that he received monthly salary payments from July 2012 through June 2013. The record reflects that the beneficiary was in the United States at the time of filing and was last admitted as a B-2 visitor on March 16, 2013, approximately eight months after commencing employment with the foreign entity.

The petitioner also submitted a copy of the beneficiary's resume. He indicates that he was previously employed with [REDACTED] Ltd. [REDACTED] from March 2012 until July 2012, and with [REDACTED] Ltd. from December 2010 until February 2012.

The director issued a request for evidence (RFE) on October 17, 2013. The director advised the petitioner that the initial evidence did not establish that the beneficiary 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, as required by 8 C.F.R. § 214.2(1)(3)(iii). Specifically, the director stated:

On the L Classification Supplement to Form I-129, Page 20, Question 5, you indicated that the beneficiary was employed abroad by [REDACTED] Ltd. since July of 2012. Your cover letter and employment verification letter also indicate an employment start date with [REDACTED] Ltd. in July of 2012. However, USCIS records and the submitted evidence show the beneficiary first entered the United States in B-2 status on November 17, 2012 and departed on December 7, 2012. They also show the beneficiary reentered the United States in B-2 status on March 16, 2013 and has remained in the United States without departing as of the date of the Notice.

Finally, USCIS records indicate that prior to being issued a B-2 nonimmigrant visa, the beneficiary was employed by [REDACTED] Ltd. USCIS is unable to establish when the beneficiary ended his employment with [REDACTED] Ltd. and commenced his employment with [REDACTED] Ltd.

In response, the petitioner asserted that the beneficiary's prior foreign employer, [REDACTED] is an affiliate of [REDACTED] and is therefore a qualifying organization. The petitioner indicated that the beneficiary was employed by [REDACTED] from February 2012 to July 2012. The petitioner provided a letter from [REDACTED] who states that he is the chairman of the board of directors for both foreign entities. Mr. [REDACTED] stated that the beneficiary held the position of vice president with both companies and performed the same job duties from February 2012 to March 2013.

The petitioner explained that the two Chinese companies are affiliates based on common majority ownership by Mr. [REDACTED] and noted that he owns 70% of [REDACTED] and 90% of [REDACTED]. In support of its claim that Mr. [REDACTED] owns [REDACTED] the petitioner submitted the following:

- An "Investment Certification" for [REDACTED], dated August 8, 2011, indicating that Mr. [REDACTED] is a corporate shareholder who contributed RMB 17,500,000 of the RMB 25,000,000 total investment in the company. The certification identifies Mr. [REDACTED] as the company's legal representative.
- A certification dated October 15, 2013, on the letterhead of [REDACTED] which states that [REDACTED] and [REDACTED] are "under the same management and ownership," with the same three board members and common majority ownership by Mr. [REDACTED].

The petitioner also submitted [REDACTED]'s payroll records for the beneficiary indicating that he received a salary for five months, from February 2012 through June 2012. In a cover letter submitted with the RFE response, counsel stated:

The beneficiary worked for [REDACTED] in China from February 2012 to July 2012. . . . [H]e worked in China for [REDACTED] from July 2012 to November 17, 2012, approximately 3 months and 17 days; and from December 7, 2012 to March 16, 2013, in other words, 24 days in December, the months of January and February and 16 days in March 2013 for a total of approximately more than 13 months Therefore, the beneficiary was employed at a qualifying company abroad for 13 months, more than 1 year in the past 3 years and qualifies for L-1 status.

The director denied the petition on November 6, 2013 after finding the evidence submitted in response to the RFE insufficient to establish that the beneficiary had one continuous year of full-time employment abroad at a qualifying foreign company in the three years preceding the filing of the petition.

On appeal, the petitioner asserts that the beneficiary had 13 months of continuous employment abroad with a qualifying organization prior to coming to the United States on March 16, 2013. The petitioner re-submits the above referenced "investment certification" as evidence of Mr. [REDACTED]'s ownership interest in [REDACTED], as well as previously submitted evidence establishing that [REDACTED] wholly owns the petitioner.

The petitioner also submits a letter dated November 19, 2013 from [REDACTED] in which he specifies exact dates of employment for the beneficiary in his role as vice president of [REDACTED] (February 1, 2012 to June 30, 2012), and exact dates of employment for the beneficiary's role as vice president of [REDACTED] (July 1, 2012 to present).

Counsel states that "[d]uring his 13 months and 16 days of employment abroad, the Beneficiary traveled to the U.S. from November 17, 2012 to December 7, 2012. But, even if the 20 days spent in the U.S. are subtracted from the 13 months and 16 days of employment abroad, the continuous one year of employment, in this case 12 months and 26 days, is satisfied."

B. Analysis

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years prior to filing the petition.

In this case, the beneficiary was admitted to the United States on March 16, 2013 and therefore the petitioner must establish that the beneficiary's one year of employment abroad occurred within the three years prior to this date. Although the beneficiary remained on the [REDACTED]'s payroll after his admission to the United States, brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A). The beneficiary previously spent 20 days in the United States from November 17, 2012 to December 7, 2012 and those days cannot be calculated in determining the length of his employment with a qualifying organization abroad. To account for these 20 days spent in the United States, the petitioner needs to establish that the beneficiary commenced employment with a qualifying organization on or before February 25, 2012 and worked continuously until March 15, 2013.

Therefore, the issues to be addressed are: (1) whether [REDACTED] is a qualifying organization; and (2) whether the beneficiary's dates of employment with a qualifying organization abroad fall within these dates.

At the time of filing, the petitioner sought to establish the beneficiary's eligibility under 8 C.F.R. § 214.2(l)(3)(iii) based solely on his approximately 13 months of employment with its parent company, [REDACTED] notwithstanding the fact that he spent five months and 20 days of those 13 months physically present in the United States. The petitioner's initial statements and supporting evidence contained no references to [REDACTED]

When the director advised the petitioner that the beneficiary was short of meeting the required one year of continuous employment abroad, the petitioner asserted that [REDACTED] the beneficiary's previous Chinese employer, is a qualifying affiliate of the foreign parent company, as defined at 8 C.F.R. § 214.2(l)(2)(i)(L)(1). The petitioner has not submitted sufficient evidence in support of this claim. As noted, the petitioner claims that [REDACTED] and [REDACTED] are both majority owned by the same individual, Mr. [REDACTED]

However, to support its claim that Mr. [REDACTED] owns 70% of [REDACTED] the petitioner provided an "Investment Certification" dated August 2011, which is accompanied by what appears to be only a partial English translation. The record contains no other evidence of the ownership of this company. As general evidence of a claimed qualifying relationship, even stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control. Going on

record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In addition, there is another nearly identical Chinese-language document in the record which is identified as the business license for the accounting firm that prepared [REDACTED]'s financial reports. Although this document is not fully translated, it is evident that both documents have the same title and format and therefore unclear why one was translated as "Investment Certification" and another translated as "Company Registered Agent Business License." In light of this discrepancy, the submitted "investment certification" is simply insufficient to meet the petitioner's burden to establish that [REDACTED] is a qualifying organization based on an affiliate relationship with [REDACTED]. The petitioner's claims regarding [REDACTED]'s ownership are not supported with adequate evidence.

Even if the petitioner had submitted sufficient evidence to establish the claimed affiliate relationship between the two Chinese entities, the record contains inconsistencies regarding the beneficiary's dates of employment with [REDACTED]. The beneficiary indicated on his resume that he worked for [REDACTED] from March 2012 until July 2012, and that he worked with [REDACTED] Ltd. from December 2010 until February 2012. As noted above, the petitioner must establish that the beneficiary commenced employment with a qualifying organization on or before February 25, 2012. Therefore, based on the information provided on the beneficiary's resume, he would be ineligible for classification as an intracompany transferee pursuant to 8 C.F.R. § 214.2(l)(3)(iii).

In response to the RFE, the petitioner stated that the beneficiary's employment with [REDACTED] commenced in "February 2012" and on appeal, the petitioner submits a new letter from the foreign entity indicating that the beneficiary commenced employment with [REDACTED] on "February 1, 2012," despite the fact that the beneficiary stated on his resume that he worked for an unrelated company for at least some portion of February 2012 and did not join [REDACTED] until March 2012. The foreign entity's self-prepared payroll records are insufficient to resolve the discrepancies in the record with respect to the beneficiary's start date with [REDACTED].

For the foregoing reasons, the petitioner has not established that the beneficiary 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. Accordingly, the appeal will be dismissed.

III. Conclusion

The appeal will be dismissed for the above stated reasons. 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.