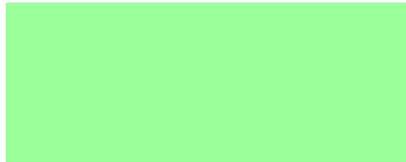




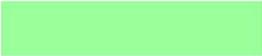
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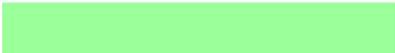


DATE: SEP 23 2014

Office: CALIFORNIA SERVICE CENTER

FILE: 

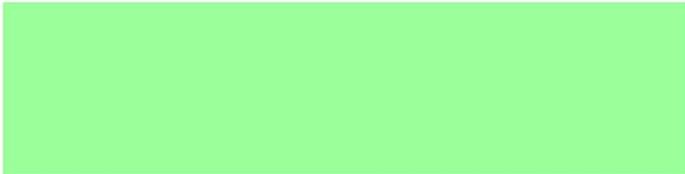
IN RE:

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.

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 appeal will be sustained.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1A 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 is a Nevada limited liability company, established in [REDACTED] that is engaged in door and fence manufacturing and sales. The petitioner states that it is a subsidiary of [REDACTED] located in China. The petitioner seeks to employ the beneficiary as the chief executive officer of a new office in the United States for a period of one year.

The director denied the petition, finding that the petitioner did not establish that it had a qualifying relationship with the foreign entity.

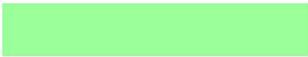
On appeal, counsel for the petitioner objects to the grounds for denial of the petition and submits additional evidence intended to clarify the means by which the foreign entity acquired a controlling interest in the petitioning company.

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.

II. QUALIFYING RELATIONSHIP

The sole issue to be addressed is whether the petitioner established that it has a qualifying relationship with the foreign entity.

- (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.

A. Facts

The petitioner filed the Form I-129 on October 16, 2013. On the Form I-129, the petitioner specified that it is a subsidiary of the beneficiary's foreign employer, which holds a 52% membership interest in the petitioner. The petitioner submitted an operating agreement dated September 14, 2012 in

which indicates at Exhibit A that the company is owned by the following members, along with their percentages of ownership and capital contributions: (1) the foreign entity - 52% interest and a \$433.33 capital contribution; (2) [REDACTED] - 12% interest and a \$100 capital contribution; (3) [REDACTED] - 12% interest and a \$100 capital contribution; (4) [REDACTED] - 12% interest and a \$100 capital contribution; and (5) the beneficiary - 12% interest and a \$100 capital contribution. The operating agreement at Article 2.1 states that "each such person [set forth in Exhibit A] is admitted as a Member effective as of the beginning of the term of the Agreement." Further, Article 2.2 of the agreement states that the form of the capital contribution could be "money, property (including promissory notes) or services rendered or to be rendered or other obligation to contribute money or property or to render services."

In addition, the petitioner provided minutes of the company's organizational meeting of members dated September 14, 2012 reflecting that the company had issued membership interests to the parties listed in the operating agreement in exchange for the consideration specified in that agreement. The petitioner also submitted investment representation letters representing the issuance of membership interests to each of the owners listed above in exchange for the corresponding consideration. Furthermore, the petitioner provided a "consent certificate of action by the members in lieu of organizational meeting of member of [the petitioner]" confirming the ownership interests and consideration paid for these interests, as set forth in the operating agreement. The petitioner submitted membership certificates issued to each member on September 14, 2012, consistent with the above stated ownership. Finally, the petitioner's business plan also reflected the ownership structure described in the submitted operating agreement.

The petitioner submitted the foreign entity's articles of association dated October 8, 2003, and various amendments thereto, the most recent dated December 3, 2008. The most recent amendment to the articles of association reflects that [REDACTED] owns an 85% share of the foreign entity's registered capital and that [REDACTED] owns a 15% share in the foreign entity.

The director later issued a request for evidence (RFE) stating that the evidence submitted by the petitioner was insufficient to demonstrate that the foreign entity holds a controlling interest in the petitioner. The director noted the petitioner's failure to submit supporting documentation to substantiate that it had received a \$433.33 capital contribution from the foreign entity. The director requested that the petitioner submit its most recent income tax returns and proof of capital contributions, including wire transfer receipts, bank statements, cancelled checks, or deposit receipts.

In response, counsel emphasized that bank records previously submitted in support of the petition reflect that the foreign entity's parent company, [REDACTED] transferred \$220,000 and \$249,975 to the petitioner's bank accounts on December 6, 2012. The petitioner submitted a letter from the petitioner dated December 3, 2012 acknowledging that it had received capital contributions from each of its asserted owners in the amounts set forth in the company's corporate documentation. The letter asserted that the petitioner had received a cash deposit of \$500 on December 3, 2012 representing \$100 from each of its members including, [REDACTED] and the foreign entity. Further, a bank statement attached to the letter reflected

that the foreign entity's parent had transferred \$249,975 to the petitioner on December 31, 2012. The petitioner indicated that \$333.33 represented the remaining amount of the foreign entity's capital contribution of \$433.33.

In denying the petition, the director noted that the petitioner had failed to demonstrate that the foreign entity made its asserted \$433.33 capital contribution in exchange for its 52% membership interest in the petitioner. The director stated that the evidence indicated that the foreign entity's capital contribution was made by another entity, [REDACTED]

On appeal, counsel submits a letter from the petitioner's CPA attesting to the foreign entity's capital contribution to the petitioner. The petitioner's CPA states that the foreign entity made its capital contribution of \$433 "via its Hong Kong bank account" in the form of \$250,000 in operating capital, "plus an additional \$433 in investment capital paid directly from [the foreign entity] to [the petitioner]." The petitioner's [REDACTED] account statement reflect its receipt of a \$415.33 wire transfer from the foreign entity.

The petitioner's CPA further referenced the Nevada Corporation Code, which in Section NRS 86.326, 5.(b) states "a person may be admitted as a member of a limited liability company and may receive a member's interest in the company without making or being obligated to make a contribution of the capital of the company." Further, the submitted portion of Nevada Corporation Code reflects that admission of members is dictated by a company's operating agreement. The CPA contends that the foreign entity's interest in the petitioner was "de facto secured" by the foreign entity "by its actions, such as meeting all the requirements in the operating agreement for becoming a managing member, and the capital contributions of cash, equipment, inventory, product designs, tooling, distribution channels, and services."

B. Analysis

Upon review of the petition, evidence, and the additional evidence submitted on appeal, the AAO will withdraw the director's sole ground for denial. The petitioner has established by a preponderance of the evidence that the foreign entity owns a 52% controlling interest in the petitioner and therefore has demonstrated that the two entities have a qualifying parent-subsidiary relationship.

As noted by the director, the petitioner left some question as to whether the foreign entity had made the stated \$433.33 capital contribution in the petitioner. The petitioner has submitted references to Nevada Corporation Code indicating that a person or entity's ownership interest is established according to a company's operating agreement. Further, the petitioner has submitted an operating agreement indicating that the foreign entity's 52% membership interest was effective as of the execution of the agreement on September 14, 2012. In addition, the petitioner has provided member certificates, minutes, and investment representation letters supporting a conclusion that the foreign entity holds a controlling 52% membership interest in the foreign entity. The petitioner also plausibly explains that the foreign entity transferred capital contributions to the petitioner through its Hong Kong parent company and has submitted evidence to establish that corporate relationship.

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 adjudicating a petition 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).

Upon review of the totality of the record, the petitioner has established by a preponderance of the evidence that it is a majority-owned subsidiary of the beneficiary's foreign employer. As such, the petitioner has demonstrated the required qualifying relationship with the foreign entity and the director's decision will be withdrawn.

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 met that burden. Accordingly, the director's decision dated January 14, 2014 is hereby withdrawn.

ORDER: The appeal is sustained.