



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: APR 28 2015

PETITION RECEIPT #: [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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this Form I-129 Petition for a Nonimmigrant Worker seeking to classify the beneficiary as an L-1A 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 states that it is engaged in the manufacture and import of electric motors and parts for vacuums and blowers. The petitioner, a Tennessee corporation established in [REDACTED] claims to be an affiliate of the beneficiary's foreign employer [REDACTED] located in China. The petitioner seeks to employ the beneficiary as its executive general manager for a period of two years.

The director denied the petition, finding that the petitioner had not established that it has a qualifying relationship with the beneficiary's foreign employer.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to this office. On appeal, the petitioner asserts it has a qualifying relationship with the beneficiary's foreign employer based on the beneficiary's partial ownership in both entities and based upon their "unique" business relationship.

#### 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 (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. THE ISSUES ON APPEAL

A. Qualifying Relationship

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

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

- (I) 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.

1. Facts

The petitioner filed the Form I-129 on March 2, 2014. The petitioner stated that it employs 22 individuals in the United States and that it earned over \$2 million in revenue during the last fiscal year. On the Form I-129, the petitioner indicated that it was an affiliate of the beneficiary's foreign employer, [REDACTED], located in China. The petitioner explained that it is owned by the following parties: the beneficiary - 55%, [REDACTED] - 35%, and [REDACTED] - 10%.

In a support letter, the petitioner stated the following with respect to ownership in the petitioner and its foreign affiliates.

[The beneficiary] is the General Manager of [REDACTED]. [The beneficiary] owns 10,000 shares of [REDACTED] stock out of 50,000 shares – 20%. Furthermore, [REDACTED] owns 16,999 shares of [REDACTED] out of 19,800 – approximately 85%. This means that [the beneficiary] is effectively a 23% shareholder of [REDACTED]. As a major shareholder of [REDACTED] and a 55% owner of [the petitioner], there is a significant shared ownership interest of [REDACTED] and [the petitioner] by [the beneficiary].

The most important investment relationship from [the beneficiary] came from the \$1 million plus investment into [the petitioner]. This investment was loaned to [the beneficiary] from [REDACTED] for the purpose of purchasing a 55% controlling interest in [the petitioner] under extremely favorable terms. Furthermore, [REDACTED] exercises its effective control over [the petitioner] through [the beneficiary's] leadership.

The petitioner indicated that it and the beneficiary's foreign employer are "very involved" because the foreign employer supplies it with "80% to 90% of our materials and assemblies." The petitioner stated that the foreign employer purchased it "on the condition that [the beneficiary], a member of the family owning the [foreign employer] and the [foreign employer's] General Manager, be given controlling ownership of [the petitioner]." The petitioner explained that through this arrangement the beneficiary and the foreign employer had "effective control" over its operations, further noting that the beneficiary is a "key executive" with the foreign employer.

The petitioner submitted a "capital stock register" reflecting a number of capital contributions by the beneficiary in 2002 amounting to over \$1.5 million in cash contributions and \$200,000 in "equipment." The register also indicated that the beneficiary had withdrawn \$270,000 in cash from the petitioner.

Further, the petitioner provided a 2012 IRS Form 1040NR U.S. Nonresident Alien Income Tax Return reflecting in Schedule K-1 that the beneficiary holds a 55% interest in the petitioner, that [REDACTED] owns 35%, and [REDACTED] the remaining 10%.

The director later issued a request for evidence (RFE) requesting that the petitioner submit additional evidence to establish that it has a qualifying relationship with the beneficiary's foreign employer.

In response, the petitioner reiterated the stated ownership previously set forth on the record. In addition, the director of the foreign employer stated the following with respect to ownership in the foreign employer and its parent entity, [REDACTED]:

Currently, [the beneficiary] is the Executive General Manager of [REDACTED] [The beneficiary] owns 22,500 shares of [REDACTED] stock out of 62,500 shares – approximately 36%. I, [REDACTED] owns 30,001 shares, approximately 48% and the remaining 9,999 shares are owned by [REDACTED] approximately 16% [...]

Furthermore, [REDACTED] owns 16,999 shares of [REDACTED] out of a total of 19,800 – approximately 86%. I, [REDACTED] owns 1,201 share, approximately 16% and [REDACTED] owns 1,220 shares, approximately 16%. This means that [the beneficiary] is effectively a 23% shareholder of [REDACTED]

In addition, the foreign employer's director stated that the company loaned the beneficiary "approximately one million dollars, so that he could become the majority share-holder of [the petitioner]." The foreign employer indicated that the beneficiary was "given this loan interest free" and noted that the beneficiary "had pledged his shares [in the foreign employer] as security." The foreign employer again asserted that it exercises "effective control" over the petitioner due to the beneficiary's controlling ownership interest.

The petitioner provided annual returns, from the "Companies Registry" in China, specific to [REDACTED] and [REDACTED]. The annual return relevant to [REDACTED] reflected the ownership previously asserted on the record. However, the annual return for [REDACTED] indicated that the entity's shares were owned as follows: [REDACTED] - 16,999 shares, [REDACTED] - 1,201 shares, [REDACTED] - 1,200 shares, [REDACTED] - 300 shares, and [REDACTED] - 100 shares.

In denying the petition, the director concluded that the petitioner had not provided evidence establishing that it and the foreign employer are owned by the same group of people, with each owning approximately the same proportion, or that the entities are owned and controlled by the same individual or company.

On appeal, the petitioner largely restates its previously contentions. The petitioner states that the beneficiary "has invested over 1 million US Dollars in the [petitioner] that set the stage of the employment of 23 permanent employees currently." The petitioner notes that the beneficiary is 55% owner and that it is "supplied with parts and assemblies from [the beneficiary's] company in [REDACTED] China." The petitioner expresses concern that if the beneficiary's petition is not approved, that the foreign employer will "consider relocating this business," leading to lost jobs in the United States. The petitioner restates its shareholders and their percentages of, as well as that related to [REDACTED] and [REDACTED]. The petitioner states that "since [REDACTED] owns 86% of [the foreign employer] and since [the beneficiary] owns 36% of [REDACTED] then the beneficiary owns .86 x .36 or 31% of [the foreign employer]." The petitioner further explains that "the relationship between [the petitioner] and the [foreign employer] is that [the beneficiary] is part owner of both companies." Lastly, the petitioner suggests that if the beneficiary is not found eligible as an intracompany transferee that this office grant the

beneficiary a "B1/B2 VISA" if we "feel this is more appropriate."

2. Analysis

Upon review of the submitted evidence, the petitioner has not demonstrated that it has a 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 (Comm'r 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 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.

First, it should be noted that the petitioner has not submitted sufficient evidence to establish its actual ownership. The petitioner has not provided copies of its stock certificates, or other supporting evidence, to demonstrate its asserted ownership. Further, as general evidence of a petitioner's claimed qualifying relationship, 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. Although the petitioner submits some documentation suggesting that the beneficiary made capital contributions, it has not substantiated with sufficient evidence that such contributions provided the beneficiary with a controlling interest in the company. Without full disclosure of all relevant documents, United States Citizenship and Immigration Service (USCIS) is unable to determine the elements of ownership and control.

Regardless, even if the petitioner's assertions regarding its ownership were sufficiently supported, the record does not support a finding that the beneficiary also owns a controlling interest in [REDACTED] or [REDACTED]. The petitioner indicates that the majority of its shares, or 55%, are owned and controlled by the beneficiary, who, according to the evidence of record, directly owns no shares of [REDACTED]. Therefore, the petitioner did not establish that both entities are owned and controlled by the beneficiary.

The petitioner explains that 86% of the foreign employer's shares are owned and controlled by [REDACTED] and that the beneficiary owns 36% of [REDACTED]. Further, the petitioner contends that the beneficiary effectively owns either 23% or 31% of the foreign employer through his indirect ownership in [REDACTED]. However, the petitioner does not explain or document its calculations. Regardless, even if correct, the petitioner's varying assertions of ownership do not reflect that the beneficiary holds an indirect controlling interest in [REDACTED].

Indeed, the petitioner states on appeal that "the relationship between [the petitioner] and the [foreign employer] is that [the beneficiary] is part owner of both companies." The entities cannot be affiliates as asserted, since they are not owned and controlled by the same parent or individual, nor 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.

In addition, the petitioner states that the foreign employer has "effective control" over the petitioner. The petitioner references the company's "unique" business relationship and the fact that the beneficiary is an executive of the foreign entity. The petitioner also claims that [REDACTED] provided the beneficiary with the money to capitalize the petitioner but has not submitted sufficient evidence in support of this claim. The petitioner does not articulate how this combination of factors establishes a qualifying relationship between the entities based on common ownership, as required by the regulations.

A petitioner may not establish that an entity owns and control another simply because it assigns an executive from the foreign entity to direct its operations or because the company's rely on each other for certain goods or services. Common ownership and control must be established with express corporate documentation, such as stock certificates, corporate stock certificate ledgers, stock certificate registries, corporate bylaws, the minutes of relevant annual shareholder meetings, or other agreements relevant to the voting of shares. The petitioner has not submitted evidence to establish that the foreign employer exercises "effective control" over the petitioner through the submission of the above referenced evidence, despite the beneficiary's claimed controlling interest. 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)).

The petitioner also suggests that common ownership and control may be established between it and the foreign employer by combining the ownership interests of the beneficiary and another owner of the [REDACTED]. For instance, the petitioner stated that the foreign employer purchased it "on the condition that [the beneficiary], a member of the family owning the [foreign employer] and the [foreign employer's] General Manager, be given controlling ownership of [the petitioner]." First, the petitioner fails to corroborate this assertion with supporting evidence. Further, familial relationships do not constitute qualifying relationships under the regulations. See *Ore v. Clinton*, 675 F.Supp.2d 217, 226 (D.C. Mass. 2009) (finding that the petitioner and the foreign company did not qualify as "affiliates" within the precise definition set out in the regulations at 8 C.F.R. § 214.2(I)(1)(ii)(L)(I), despite petitioner's claims that the two companies "are owned and controlled by the same individuals, specifically the Ore family").

For the foregoing reasons, the petitioner has not established that it has a qualifying relationship with the foreign employer. Accordingly, the appeal will be dismissed.

#### B. Request for Change of Status to B1/B2

On appeal, the petitioner suggests that if the beneficiary is found ineligible as an intracompany transferee in the current matter, that this office consider modifying the petition to that of a B-1 business or B-2 tourist visa status if deemed "more appropriate."

The petitioner's request that the beneficiary be granted a new nonimmigrant visa status is not properly before us on appeal. It is not the consistent with the authority of this office to postulate on a beneficiary's potential eligibility for other visa classifications outside that which is the subject of the current appeal. USCIS will



only consider the visa classifications that the petitioner annotates on the petition. The Ninth Circuit has determined that once USCIS concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate classification. *Brazil Quality Stones, Inc., v. Chertoff*, 286 Fed. Appx. 963, 2008 WL 2743927 (9th Cir. July 10, 2008).

Moreover, a request for B1/B2 status cannot be filed on Form I-129. If the beneficiary is maintaining a valid nonimmigrant status, the petitioner may file a request for a change of status on Form I-539, Application to Extend/Change Nonimmigrant Status with the appropriate USCIS office. Alternatively, the beneficiary may apply for a B1/B2 visa at a U.S. Embassy or Consulate outside the United States.

### 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.