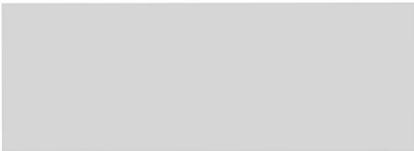


(b)(6)

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



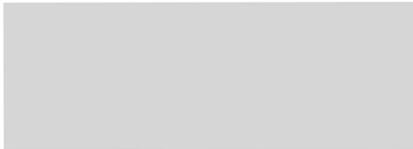
DATE: **APR 28 2015**

PETITION RECEIPT #: 

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:



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) 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 petition for a nonimmigrant visa. 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, seeking to classify 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, a Delaware corporation established in [REDACTED] is a mobile wireless hotspot provider. The petitioner states that it is an affiliate of the beneficiary's foreign employer, [REDACTED], located in the Netherlands. The petitioner seeks to employ the beneficiary as its vice president of engineering for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that it has a qualifying relationship with the foreign employer.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to our office for review. On appeal, the petitioner contends that it has "clearly established" common ownership and control between it and the foreign employer as necessary to demonstrate a qualifying 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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

The regulation at 8 C.F.R. § 214.2(I)(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 (I)(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 ISSUE ON APPEAL

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

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.

1. Facts

The petitioner filed the Form I-129 on March 21, 2014. The petitioner stated that it employs six individuals in the United States and its 2013 IRS Form 1120 U.S. Corporation Income Tax Return indicated that it earned over \$1.2 million during that fiscal year. The petitioner explained that it is developing a wireless hotspot network through the sale of prepaid mobile wireless devices.

On the Form I-129, the petitioner stated that it has an affiliate relationship with the beneficiary's Dutch employer based upon common ownership by the same Delaware corporation, [REDACTED]. The petitioner submitted what it described as "stock ledgers," indicating that all 100 of the petitioner's shares were owned and controlled by [REDACTED] as of January 23, 2012 and that all 18 of the foreign employer's shares were also owned and controlled by [REDACTED] as of January 19, 2012. The "stock ledgers" were tables on company letterhead and signed by CEO [REDACTED] on October 16, 2013. The petitioner did not submit copies of share certificates. The submitted "ledgers" each contained a field for "Share Cert. Number" and on each, the certificate number is designated as "N/A."

As additional evidence of the ownership of the foreign employer, the petitioner provided a letter from counsel dated January 20, 2013 indicating that [REDACTED] and [REDACTED] "had the power to represent [REDACTED] for the purposes of the execution of the Power of Attorney in the name and on behalf of the [REDACTED]." Attached to the aforementioned letter was a "Power of Attorney Incorporation" dated January 19, 2012 stating that [REDACTED] "shall participate with 18.000 shares in the share capital of [the foreign employer], each with a nominal value of EUR 1."

The petitioner further submitted an undated "Unanimous Written Consent of the Board of Directors of [the petitioner]" reflecting that the petitioner was authorized to issue 13 million shares of common stock at \$0.0001 per share." The document states that "now, therefore, be it resolved that the [petitioner] issue a total 4,800,000 shares of common stock to the persons set forth below and for the consideration set forth below." The document listed the receiving entity as [REDACTED], noting that it had received 100 shares, but did not indicate the amount of consideration paid for this stock.

The petitioner also provided a corporate organizational chart reflecting that [REDACTED] is owned by four separate entities, [REDACTED] a Dutch company with 38% ownership; [REDACTED] a Dutch company with 38% ownership; [REDACTED] a U.S. company with 4% ownership; and the remaining 20% owned by a U.S.-based "employee equity incentive plan." The chart indicated that [REDACTED] owns 100% of both the petitioner and the foreign employer. The chart further reflected that the foreign employer had

"acquired" a company called "[REDACTED]"

In addition, the petitioner submitted a copy of its 2012 IRS Form 1120, U.S. Corporation Income Tax Return, reflecting in Schedule G that 48% of its stock was owned and controlled by [REDACTED] and that another 48% was owned and controlled by [REDACTED]. At Schedule K, where asked to identify the number of shareholders it had at the end of the tax year, the petitioner stated "3."

Finally, the petitioner submitted an affidavit from [REDACTED] executed on September 9, 2013, in which he states that, based on his position as the founder, largest shareholder and corporate officer for [REDACTED] he can attest that [REDACTED] owns and controls 100% of both the petitioner and [REDACTED].

The director later issued a request for evidence (RFE) noting that the petitioner had submitted contradictory evidence of its ownership, pointing to its IRS Form 1120 which did not indicate that it was 100% owned by [REDACTED], as asserted. As such, the director requested that the petitioner submitted some of the following evidence to establish its ownership: (1) its most recent Securities and Exchange Commission (SEC) 10-K or annual report, (2) meeting minutes, (3) articles of incorporation, (4) stock purchase agreements, (5) stock certificates, (6) stock ledgers, or (7) proof of stock purchases, including wire transfers, bank statements, or deposit receipts.

In response, the petitioner stated that it is "a small start-up enterprise," and as such, it does not have a SEC 10-K or audited financial statements. The petitioner acknowledged that its tax returns included a discrepancy in ownership, stating that it had "undergone ownership changes and transfers since that time, and the evidence of these ownership changes and transfers was included with the initial petition." The petitioner provided a company organizational structure nearly identical to that previously submitted on the record.

The petitioner submitted a "Founder Stock Purchase Agreement" between [REDACTED] and [REDACTED] dated February 8, 2012. The agreement stated that [REDACTED] agreed to sell to [REDACTED] 2,400,000 shares of common stock for \$240. The petitioner also provided a table reflecting in the ownership of [REDACTED]. The table indicated that the company's shares were owned by the following parties in the stated amounts: [REDACTED] - 2,400,000 shares or 53.07%; [REDACTED] - 600,000 shares or 13.27%; [REDACTED] - 252,632 shares or 5.59%; and the "employee equity plan"- 1,269,477 shares or 28.07%. Further, the chart noted that six other individuals owned 1,269,477 "options" in [REDACTED].

The petitioner provided its certificate of incorporation dated January 18, 2012 which states that it was entitled to issue 100 shares of stock at a par value of \$0.0001, but the document did not indicate to whom any shares were issued. The petitioner again submitted the aforementioned "stock ledgers" dated in October 2013 reflecting [REDACTED] asserted ownership of the petitioner and the beneficiary's foreign employer. The petitioner also provided its bylaws; however, this document does not include information regarding the petitioner's ownership.

The petitioner again submitted the power of attorney relevant to the formation of the beneficiary's foreign employer. The petitioner provided an opinion of corporate counsel stating that "each of [redacted] and [redacted] in his capacity as officer of the [foreign employer], as of the date of the execution and delivery of the Power of Attorney, has the authority to act on behalf of the [foreign employer] for the purpose of the execution of the Power of Attorney in the name and on the behalf of the [foreign employer]."

The petitioner submitted a document dated March 22, 2013, signed by the director of [redacted], [redacted] stating that the company was transferring 2,400,000 shares of stock in [redacted]. The petitioner provided a copy of its 2013 IRS Form 1120 which indicates at Schedule G that the petitioner is 48% owned and controlled by [redacted] and 48% owned and controlled by [redacted].

In denying the petition, the director pointed to the fact that the petitioner submitted conflicting corporate documentation indicating that it had issued 13 million shares, 4.8 million shares, and 100 shares. The director further noted that the petitioner's IRS Forms 1120 reflected that it was not wholly owned by [redacted], but rather that it is 48% owned by [redacted] and 48% owned by [redacted]. The director determined that without stock certificates or a stock ledger, it is not possible to determine the total number of shares the petitioner has issued to date or to determine what individuals or entities own the outstanding shares.

On appeal, the petitioner asserts that the director improperly focused on the ownership of [redacted]. The petitioner emphasizes that it is only required to address ownership in the petitioner and the foreign employer in order to establish that the two companies are affiliates. The petitioner contends that the preponderance of the evidence establishes that the petitioner and the foreign employer are both wholly owned by [redacted].

Further, the petitioner contends that the director misunderstood the requirements of the IRS Form 1120, Schedule G, stating that this schedule requires that the filer reflect "constructive ownership" in the company, not actual ownership. As such, the petitioner asserts that there is no inconsistency in its IRS Forms 1120, as the information provided at Schedule G reflects the ownership of [redacted] which in turn owns the petitioner.

In addition, the petitioner indicates that there is a "scrivener's error" in its board consent issuing shares to [redacted] specifically its reference to the issuance of 4.8 million shares. The petitioner submits an additional board consent dated August 1, 2014 correcting the aforementioned error.

Finally, the petitioner provides updated stock ledgers for it and the foreign employer, which reflect the asserted ownership in each entity by [redacted]. However, these documents are in a completely different format when compared to the stock ledgers previously submitted on the record. The new stock ledger indicates that [redacted] was issued stock certificate no. 1 of both the petitioner and the foreign entity in January 2012. The

ledger for the foreign entity indicates that [REDACTED] was issued 18,000 shares rather than 18 as indicated on the previously provided stock ledger.

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, the petitioner has not submitted sufficient evidence to establish its actual ownership. In the RFE, the director requested that the petitioner provide additional evidence to demonstrate ownership, including stock certificates, stock ledgers, minutes, evidence of consideration paid for the petitioner's stock, amongst other relevant documentation. However, the petitioner inadequately responded to the director's request. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Indeed, despite various opportunities to do so, the petitioner has yet to submit stock certificates corroborating [REDACTED] asserted ownership in the petitioner. The petitioner provided what it claimed to be "stock ledgers," but these documents are merely statements of ownership set forth on company letterhead and created more than 22 months after the petitioner's formation. The lack of these crucial documents leave question as to the actual ownership in the petitioner as of the date of the filing of the petition, particularly in the light of the apparent discrepancies elsewhere on the record. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Indeed, the petitioner only creates further question on appeal by submitting claimed stock ledgers in a completely different form than those previously submitted on the record. As noted, the petitioner still fails to provide stock certificates confirming its ownership or other requested supporting evidence, such as proof that [REDACTED] paid consideration for its shares. Further, while the "stock ledgers" submitted at the time of filing indicated that the stock certificate number for the shares issued to [REDACTED] was "N/A," the new ledger submitted on appeal indicates that [REDACTED] holds the petitioner's stock certificate no. 1.

Although the petitioner provides some evidence, such as the board consent confirming the issuance of its shares to [REDACTED], it has failed to substantiate this transaction with other supporting evidence.

Further, the petitioner has not provided sufficient evidence to establish [REDACTED] claimed ownership in the foreign employer. Much like the evidence of the petitioner's ownership, it has submitted a "power of attorney" indicating that all 18,000 of the foreign employer's shares were issued to [REDACTED]. However, the petitioner has not provided supporting evidence to substantiate this transaction, such as stock certificates, reliable stock ledgers, minutes, or proof of consideration paid for the stock. In fact, it has submitted stock ledgers in two completely different forms created well after the transaction took place, one indicating the issuance of 18 shares with no stock certificate, and one indicating that 18,000 shares were issued to [REDACTED] on stock certificate no. 1. 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)).

As observed in the director's decision, the petitioner provided 2012 and 2013 IRS Forms 1120 stating that the petitioner was owned 48% by [REDACTED] and 48% by [REDACTED], an ownership structure which is inconsistent with the petitioner's claim that it is wholly owned by [REDACTED]. Although we acknowledge that a company could interpret the IRS Form 1120 to require a statement of "constructive ownership," or the ownership in [REDACTED], the petitioner has not submitted sufficient explanation or evidence to substantiate that this was the basis of this discrepancy. In fact, the petitioner has provided substantial evidence setting forth ownership in [REDACTED] and none of this evidence supports a conclusion that this entity was ever 48% controlled by each of [REDACTED] and [REDACTED]. Indeed, the petitioner submitted a company organizational chart reflecting that the beneficiary's foreign employer wholly owned [REDACTED], thereby leaving its assertion of "constructive ownership" in the IRS Forms 1120 questionable.

Further, the petitioner claims that [REDACTED] underwent a change in ownership in 2013 and that [REDACTED] had no ownership in [REDACTED] at the end of the 2013 tax year. Therefore, it is unclear why the information provided at Schedule G of both the 2012 and 2013 tax returns would be the same.

We acknowledge that the petitioner need not establish ownership in [REDACTED] in order to demonstrate that this entity owns both the petitioner and the foreign employer. However, the discrepancies in the record with respect to its stated ownership in [REDACTED], particularly those regarding "constructive ownership" on appeal, only leave further question as to the sufficiency of the petitioner's statements overall. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

We consider the totality of the evidence to determine whether the petitioner has established a qualifying relationship with the beneficiary's foreign employer. This includes analyzing stock certificates, corporate stock certificate ledgers, stock certificate registries, corporate bylaws, and the minutes of relevant annual shareholder meetings. It may also include all agreements relating to the voting of shares, the distribution of profit, the management and direction of the companies and any other factor affecting actual control of the entities. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986). Further, the director may reasonably inquire beyond corporate documentation into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence could include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

Here, the petitioner has submitted little evidence beyond a board of director's consent relevant to its ownership and a similar "power of attorney" specific to the foreign employer. However, none of the other relevant evidence referenced above has been provided and the petitioner has not offered an explanation as to the absence of this evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). If a required document does not exist or cannot be obtained, the petitioner must demonstrate this and submit secondary evidence pertinent to the facts at issue. *Id.* The statement must indicate the reason the record does not exist and indicate whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii).

Therefore, without full disclosure of all relevant documents, we are unable to determine the elements of ownership and control. In fact, the petitioner provides supporting evidence that contradicts its assertions of ownership, including conflicting stock ledgers and IRS Forms 1120, and fails to resolve these with additional corroborating evidence.

For the foregoing reasons, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer. For this reason, the appeal must 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.