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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 05 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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

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 The director's decision will be withdrawn and the matter will be remanded to the service center for further action and entry of a new decision.

The petitioner filed a Petition for a Nonimmigrant Worker (Form I-129) seeking to extend the beneficiary's status 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 operates a restaurant business. The petitioner indicates that it is a subsidiary of The beneficiary was previously granted one year in L-1A status in order to open a "new office" in the United States as the petitioner's president. The petitioner now seeks to extend the beneficiary's status for three additional years.[1]

The director denied the petition, concluding that the petitioner did not establish that the beneficiary is employed in a qualifying managerial or executive capacity.

On appeal, the petitioner contends that it employs sufficient employees and professionals to support the beneficiary in a qualifying managerial and executive capacity.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon reviewing the entire record of proceeding as supplemented by the petitioner's submission on appeal, we conclude that the record contains sufficient evidence to overcome the basis for the director's decision. Accordingly, the petitioner has established that the beneficiary will be employed in a qualifying managerial or executive capacity, and the director's decision dated September 26, 2014 will be withdrawn.

Notwithstanding our decision to withdraw the director's decision, we are unable to sustain the appeal as the record as presently constituted does not contain sufficient evidence 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 his initial L-1A petition. Therefore, the matter will be remanded to the director, who is instructed to request any additional evidence necessary and enter a new decision, consistent with the discussion below.

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.

[1] Consistent with 8 C.F.R. § 214.2(l)(15)(ii), an extension of stay may only be authorized in increments of up to two years.

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 EMPLOYMENT ABROAD

The petitioner filed the Form I-129 on June 9, 2014. The petitioner stated on the Form I-129 Supplement L that the beneficiary was employed as the CEO of [redacted] located in China from January 1, 2003 until November 30, 2013.

On June 20, 2014, the director issued a request for evidence in which the petitioner was requested to provide: (1) evidence of a qualifying relationship between the beneficiary's foreign employer; and (2) clarification regarding the beneficiary's one year of full-time continuous employment abroad with the petitioner's claimed parent company.

The director advised the petitioner of potentially derogatory information obtained from outside the record pursuant to 8 C.F.R. § 103.2(b)(16)(i). Specifically, the director observed that the beneficiary's nonimmigrant visa application filed at the U.S. Consulate in Beijing on June 18, 2012 showed that the beneficiary had been working for [redacted] in [redacted] China as its Chairman since April 10, 2006. Therefore, the director requested additional evidence to clarify this discrepancy, such as the beneficiary's pay and personnel records.

In response the petitioner submitted a statement from the beneficiary dated August 1, 2014. He confirmed his employment as president and CEO of [redacted] from 2003 until the date of his transfer to the United States. He also stated:

> In September 2005, as part of its business development strategy, invested 5.88 million RMB (Chinese Yuan) in a and acquired 49% of its shares. The investment was made by (2.1 million RMB) and (3.78 million RMB). I was appointed by the company as the Legal Representative and assumed the position as Executive Director (Chairman) of the from 2006. In early 2007, decided to let me hold the 49% shares in on behalf of and in proxy, and the shares were transferred accordingly. My position as the Executive Director (Chairman) with the remains to this date and runs concurrently with my position as CEO of the
>
> When I applied for a B-1 visa to the United States, I was traveling on and for the bona fide business of as its Chairman. This was the reason why I reported my employment position as such with the Department of State.

The petitioner included a copy of a "Resolution on Proxy Shareholding of" dated February 2, 2007 made by the Trust board of directors. The resolution references the acquisition of a 49 percent interest in in September 2005, and notes that the Trust and had appointed the beneficiary to serve as Legal Representative and Executive Director of The board further resolved to combine the shares held by and and appoint the beneficiary to hold those shares in proxy.

The petitioner also provided initial business license indicating that the company was established in as well as copies of various "Notices of Change" filed with the Authority between 2001 and 2007. These documents generally support the information provided in the beneficiary's statement, and indicate that, at all times, the majority owner of has been while the minority owner as of 2007 was the beneficiary, with 49% of the shares.

The petitioner also submitted a "2013 Wages Sheet" for which indicates that the beneficiary was paid each month of 2013. This document is in English and not accompanied by the original Chinese language document or a translator's certificate.

Upon review of the evidence of record, we cannot determine whether the beneficiary was a full-time employee of for one continuous year in the three years preceding the filing of his initial L-1A petition.

While the beneficiary has explained why he identified as his employer on a nonimmigrant visa application in 2012, he has not explained why he did not list at all on his visa application, particularly if it was in fact his full-time employer at the time of the visa application. The record supports a finding that the beneficiary was a minority shareholder of , at least as of 2007; however, it does not support a finding that ever had a qualifying relationship with Rather, the evidence shows that the majority owner of has always

been who has no documented ownership interest in the petitioner's claimed foreign parent company.

Based on the foregoing discussion, additional information and evidence will be needed to establish that the beneficiary was a full-time employee of a qualifying organization abroad during the three-year period immediately preceding the filing of the beneficiary's initial L-1 visa petition.

III. CONCLUSION

At this time, we take no position on whether the beneficiary qualifies for the classification sought. The director must make the initial determination on that issue after issuance of a request for evidence and consideration of the petitioner's response.

Accordingly, we will withdraw the director's decision and remand the petition to the director for further review, issuance of a new request for evidence and entry of a new decision. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision dated September 26, 2014 is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing discussion and entry of a new decision which, if unfavorable to the petitioner, shall be certified to the Administrative Appeals Office for review.