



U.S. Citizenship  
and Immigration  
Services

(b)(6)



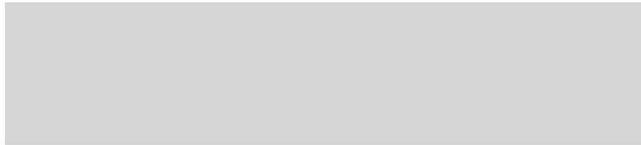
Date: **AUG 25 2015**

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](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 be "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 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 New York limited liability company established in [REDACTED] states that it provides specialized accounting and management services. The petitioner claims to be an affiliate of [REDACTED] located in Israel. The petitioner seeks to transfer the beneficiary to the United States to serve in the position of Accountant for a period of three years.

The director denied the petition on multiple independent grounds, concluding that the petitioner did not establish: (1) that it has a qualifying relationship with the beneficiary's foreign employer; (2) that the foreign entity is doing business; (3) that the petitioning U.S. company is doing business; (4) that the beneficiary was employed by a qualifying foreign entity for one continuous year within the three years preceding the filing of the petition; (5) that the beneficiary's employment abroad was in a position that was managerial, executive, or involved specialized knowledge; (6) that the beneficiary possesses specialized knowledge; and (7) that the beneficiary's position in the United States requires specialized knowledge.

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 asserts that the beneficiary meets the requirements for the requested L-1B classification. The petitioner submits a brief on appeal.

## 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.*

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

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. THE ISSUES ON APPEAL

### A. Specialized Knowledge

The first issue to be addressed pertains to specialized knowledge, and whether the petitioner established that the beneficiary possesses specialized knowledge and whether the beneficiary has been employed abroad, and would be employed in the United States, in a position that involves specialized knowledge. The petitioner does not claim that the beneficiary has been employed abroad in a managerial or executive capacity.

#### 1. Facts

On the Form I-129, the petitioner indicated that it currently has two employees in the United States and a gross annual income of \$321,309. The petitioner stated that the beneficiary will be working as an accountant. On the Form I-129, the petitioner stated that the beneficiary has been and will be performing the following duties:

Providing specialized accounting services to firms and individuals with income and assets in both the United States and Israel. These services rely on specialized and proprietary

accounting techniques and knowledge to ensure a proper calculation of income and tax liabilities to comply with laws and accounting practices in the United States and Israel.

In its letter of support, dated July 26, 2014, the petitioner described the beneficiary's experience and specialized knowledge, as follows:

We are seeking to employ the beneficiary as a person with specialized knowledge. The Beneficiary has specialized knowledge in the field of international accounting for persons with income or business interests both in the United States and Israel. She is a licensed accountant in Israel, and is also familiar with U.S. tax procedures and regulations. This knowledge has been gained by working with the Israeli tax system and working with U.S. tax experts over a number of years. . . . Only an accountant with in-depth knowledge of the tax laws of both countries and how they interact would be able to provide proper advice. The Beneficiary's knowledge is specialized because [the foreign entity] has developed proprietary business plans and investment vehicles which comply with the laws of both the United States and Israel. This proprietary knowledge is not simply limited to being a different method of accounting, but also includes complex business planning. An accountant either in the U.S. or Israel without the specialized knowledge of the Beneficiary would not be able to implement the business structuring and planning strategies that [the foreign entity] has been implementing in Israel.

In the same letter of support, the petitioner described the beneficiary's proposed duties in the United States as follows:

[The petitioner] employs [redacted] who is an authorized tax filer with the U.S. Internal Revenue Service. The Petitioner requires the services of the Beneficiary to interface directly with clients in the United States, to be able to provide them with face-to-face meetings regarding their financial situations. This arrangement will allow [the petitioner] to provide tax and business planning and structuring services in the United States more efficiently, and will facilitate investment between the United States and Israel.

The petitioner submitted the beneficiary's resume describing her work and experience as follows:

[The beneficiary] brings a specialization to [the petitioner] based in New York, that specialization is her proficient knowledge of Hebrew and English. Her 18 years' experience as a licensed CPA, licensed VAT collection and submission on behalf of Israeli IRS and her 4 years' experience in filing tax returns, business consulting, Payroll filing, Sales tax filing, Business plan preparation and budget and financial reports in her capacity as owner of [the petitioner].

The resume described the beneficiary's duties at the foreign entity, as owner, from 1996 to the present, as follows:

Providing services for businesses, individuals and privately owned companies in the service industry such as engineering and surveying, media advertising and more, with annual budgets up to \$4 million in the following areas:

- Auditing financial statements for companies, including submitting the annual reports to the tax authorities and related institutions, such as Ministry of Justice (Registrar of Companies).
- Preparing annual income reports for individuals in front of the tax authorities.
- Representation for companies and individuals in front of tax authorities.
- Management and financial consulting: preparation of business plans for businesses to be created, preparing budgets for existing businesses, analyzing financial reports for better management, providing consultation for business operating, highlighting the weak units in the businesses management regarding its financial operations.
- Daily support for any current problem that occurs within the financial management of the business or in dealing with the government institutions.
- Accounting and book keeping services, including submitting monthly reports to the tax authorities.
- Payroll.
- VAT collection and tax filings.
- Social Security and Pension fund collection and monitoring.
- Licensed by IRS to collect VAT

The resume further described the beneficiary's duties in the United States as the petitioner's owner since 2010 as follows:

Providing services for businesses, individuals and private companies in various industries in the following areas:

- Accounting and Bookkeeping.
- Annual Tax Returns.
- Payroll
- Sales tax filings
- Business Consulting & Work Flow Analysis, including Startup Businesses: preparation of business plans and budgets and analyzing financial reports.

In a request for evidence (RFE), the director advised the petitioner that the evidence presented was insufficient to demonstrate that the beneficiary (1) has been employed abroad in a position involving specialized knowledge, (2) possesses specialized knowledge, and (3) will be employed in a position involving specialized knowledge in the United States. The director instructed the petitioner to submit evidence to satisfy each requirement.

In response to the RFE, the petitioner submitted a letter from [REDACTED] C.P.A., dated September 10, 2014, stating that he has known the beneficiary for over 20 years and attesting to her claimed specialized knowledge, as follows:

[The beneficiary] holds the knowledge of the specialized accounting procedures used to manage tax issues for persons with income in both Israel and the United States constitutes specialized knowledge because:

1. No other person in [the foreign entity] could have the knowledge, because she is a sole practitioner. Therefore, [the beneficiary] has the most advanced knowledge possible for the accounting systems used by [the foreign entity].
2. Only a handful of accountants in Israel or the United States are familiar enough with the tax laws of both countries to prepare tax returns in both countries for persons with complicated income sources, such as the clients [the beneficiary] serves.
3. The accounting practices utilized by [the beneficiary] are unique even among accounting firms in that she has developed a way of categorizing income and expenses which has been determined to comply with the laws of both Israel and the United States, and which allows for the maximum tax benefits allowed by the laws of both countries. This is a unique system, and [the beneficiary] is the only person with an understanding of this system.
4. It is likely that it would take many years preparing income tax returns in both Israel and the United States to achieve the level of specialized knowledge possessed by [the beneficiary]. Only a significant amount of experience reviewing income sources and expenses, and reviewing decision by the tax authorities of both Israel and the United States could provide the skill necessary to apply the advanced accounting procedures utilized by [the foreign entity].

In the same letter, Mr. [REDACTED] provided a narrative description of the beneficiary's duties and noted that she is well-respected in her field.

The petitioner submitted an affidavit dated October 10, 2014 from [REDACTED] its vice president. Mr. [REDACTED] stated that the beneficiary will perform the following duties in the United States:

2. The Beneficiary will initially spend time organizing and developing the U.S. affiliate.
3. The Beneficiary will spend her time in the United States analyzing complex or unusual international tax matters presented by clients, developing clients and markets, and training me and other employees in advanced tax issued.
4. The Beneficiary's training will equip me, and other employees, to deal with many of the more advanced tax issues, and will show me the proprietary tax procedures that make her business uniquely able to serve the client base that the foreign affiliate now serves.
5. When the Beneficiary's temporary status is finished, it is anticipated that the U.S. affiliate will be up and running at full capacity, and the other employees and I will be able to perform the tax analysis and planning duties without the need for the Beneficiary to be present in the United States.

The petitioner submitted copies of the beneficiary's degrees and certifications from Israel, which she partially translated using handwritten notations in the margins. The petitioner submitted the beneficiary's Bachelor of Arts in Economics and Accounting, dated June 3, 1993, the beneficiary's Certificate in Accounting Final

Studies, dated June 3, 1993, and the beneficiary's Diploma in Financial Accounting Standards Board and the implications of the transition to IFRS, dated March 2008. The petitioner also submitted a certificate from the Accountants Council of Israel verifying that the beneficiary is authorized to conduct business in accounting, dated March 14, 1996, and a certificate from the [REDACTED] in Israel certifying that the beneficiary was admitted as a member on October 14, 1996.

The director denied the petition, concluding, in part, that the petitioner had not established that the beneficiary possesses specialized knowledge or that she has been employed abroad or would be employed in the United States in a position requiring specialized knowledge. In denying the petition, the director found that, although the petitioner contends that its organization is a specialized accounting and management enterprise, it did not state what product, service, tool, research, equipment, process, or procedure the beneficiary would utilize that involves specialized knowledge, nor did it adequately explain how these might be applied in the international marketplace. The director also found that the petitioner did not effectively articulate how knowledge commonly held throughout the industry pertaining to tax laws for the United States and Israel constitute specialized knowledge of its organization. The director further found that the Vice President's letter, submitted in response to the RFE, neither contends nor establishes that the beneficiary possesses specialized knowledge of the organization or requires specialized knowledge of the organization to perform her intended duties.

On appeal, the petitioner asserts that the beneficiary possesses specialized knowledge and that the director's decision is unclear because it does not specify the basis for the conclusions made.

## 2. Analysis

Upon review, we find that the petitioner has not established that the beneficiary possesses specialized knowledge and that she has been employed abroad, and will be employed in the United States, in a position involving specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts or prongs. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person “has a special knowledge of the company product and its application in international markets.” Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person “has an advanced level of knowledge of processes and procedures of the company.” *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

U.S. Citizenship and Immigration Services (USCIS) cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. *See Matter of Chawathe*,

25 I&N Dec. 369, 376 (AAO 2010). 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. *Id.*

As both “special” and “advanced” are relative terms, determining whether a given beneficiary's knowledge is “special” or “advanced” inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner's claims are based on both prongs of the statutory definition. Specifically, the petitioner states the beneficiary has expert knowledge of its proprietary products and processes as well as their application in international markets.

In examining the beneficiary's specialized knowledge and whether the offered position requires specialized knowledge, we will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.*

In reference to the experience required to perform the duties of the beneficiary's position in the United States, the petitioner indicates that it would likely take many years of preparing income tax returns in both Israel and the United States to achieve the level of specialized knowledge possessed by the beneficiary and only a significant amount of experience reviewing income sources and expenses and decisions by the tax authorities of both Israel and the United States could provide the skill necessary to apply the advanced accounting procedures utilized by its company. Therefore, one of the critical questions before us is whether the petitioner has supported its claim that the beneficiary's experience in preparing tax documents for Israel and the United States and her knowledge of the petitioner's claimed “unique” processes constitutes specialized knowledge.

The petitioner in this matter has not provided sufficient probative evidence establishing the nature of the claimed specialized knowledge. The crux of the petitioner's claim is that the beneficiary's years of experience in Israel preparing tax documents for clients in Israel and the United States, along with experience developing a “unique” system of categorizing income and expenses to achieve tax code compliance and maximum tax benefits in both countries, has resulted in the beneficiary's specialized and advanced knowledge. However, the petitioner has not provided probative evidence establishing that its “unique system” for categorizing income and expenses to comply with the laws of Israel and the United States is distinct in comparison to those systems used by other accounting firms. Every accounting firm seeks to categorize income and expenses and prepare tax documents in a manner that complies with existing laws and satisfies clients by allowing for the maximum tax benefits allowed. Although the petitioner states that the beneficiary has developed a “unique system” for categorizing income and expenses pursuant to the existing laws in Israel and the United States, the petitioner has not established how the beneficiary's knowledge of this “unique system” requires a level of knowledge that is different from what is generally possessed by similarly employed accountants in the industry. Moreover, the petitioner has not established with supporting evidence how this knowledge, even if proprietary, is “special” or “advanced.” The record is deficient in this regard. As such, we affirm the

director's determination that insufficient evidence was presented to establish that the position of accountant, as described in the record, involves a special or advanced level of knowledge in the preparation of tax documents for clients in Israel and the United States.

The petitioner also claims that it is the beneficiary's specific experience at the foreign entity which resulted in her possession of specialized knowledge. Here, the petitioner does not indicate a specific time frame to obtain the same level of knowledge possessed by the beneficiary. The petitioner simply states that "many years of experience" are required, and adds that the beneficiary's experience abroad provides her with an understanding of its "unique system" used for preparing tax documents in Israel and the United States. The petitioner provided a copy of the beneficiary's degrees and certificates and stated that she is fluent in Hebrew and English. However, the record does not include the information needed to make a comparison between the beneficiary's training and experience and that possessed by others within the industry as a whole. Although the petitioner states that the beneficiary is the only accountant at the foreign entity possessing this unique experience within the company, she is also the only claimed employee of the foreign entity. Further, the petitioner does not detail the type or amount of training that would allow other accountants potentially hired at the foreign entity to perform the same duties performed by the beneficiary. Rather, the petitioner's Vice President states that at the end of the beneficiary's temporary employment in the United States, he and other employees of the petitioner, will be trained sufficiently to perform the tax analysis and planning duties without the need for the beneficiary to be present. Therefore, while the record establishes that the beneficiary possesses the knowledge and skills required to prepare tax documents in Israel and the United States, the petitioner does not establish that this knowledge is significantly different from that possessed by others who work with similar products and processes designed for the related industry. Accordingly, the petitioner has not established that the beneficiary possesses specialized or advanced knowledge.

Although the petitioner asserts that the beneficiary's position in the United States involves specialized knowledge, the petitioner has not sufficiently articulated or documented its claims. Other than submitting a brief description of the beneficiary's current and proposed job duties and a vague explanation of how those duties require knowledge of its "unique system" for preparing tax documents in Israel and the United States, the petitioner has not identified any aspect of the beneficiary's position which involves knowledge that rises to a level that is special or advanced. Specifically, the petitioner has not demonstrated what aspects of preparing tax documents in Israel and the United States would require knowledge that is particularly complex or different from what is commonly held by experienced accountants with the same skills.

Overall, the evidence does not reflect how the knowledge and experience required for the beneficiary's position would differentiate that position from similar positions at other employers within the industry. Again, the petitioner's claim that the knowledge is proprietary must be accompanied by evidence establishing that the beneficiary possesses knowledge that is different from what is generally possessed in the industry; any claimed proprietary knowledge must still be "special" or "advanced." Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

For the reasons discussed above, the petitioner has not established by a preponderance of the evidence that the beneficiary possesses specialized knowledge and that she has been employed abroad, and will be employed in the United States, in a position requiring specialized knowledge. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

B. Qualifying Relationship

The next issue to be addressed is whether the petitioner has established that the United States and foreign entities are qualifying organizations. To establish a “qualifying relationship” under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with “branch” offices), or related as a “parent and subsidiary” or as “affiliates.” See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

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.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(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

- (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

On the L Classification Supplement to Form I-129, the petitioner identified the beneficiary's last foreign employer as "[REDACTED]" and stated that the foreign and U.S. companies have a joint venture relationship. Where asked to describe the stock ownership and control of each company, the petitioner stated:

[REDACTED]

In support of the petition, the petitioner did not provide evidence of the claimed joint venture relationship. The petitioner provided a copy of Meeting Minutes for [REDACTED] dated January 1, 2014, stating that [REDACTED] acquired 49% of [REDACTED] and will pay [REDACTED] the sum of \$25,000 in 25 monthly installments of \$1,000 each. The document further appoints [REDACTED] as the CFO of [REDACTED] who "shall be wholly responsible for all bookkeeping, accounting, tax returns, financial planning, investments and financial reporting for [REDACTED]". The petitioner provided a second copy of Meeting Minutes for [REDACTED] dated January 1, 2014, stating that [REDACTED] acquired 96 ordinary shares issued in exchange for \$25,000.

The petitioner submitted [REDACTED] Internal Revenue Service (IRS) Form 1120S, U.S. Income Tax Return for an S Corporation, for 2013, listing [REDACTED] on its balance sheet.

The petitioner also submitted its IRS Form 1120, U.S. Corporation Income Tax Return, for 2012 and 2013, but did not submit the schedules specifically identifying its ownership.

The petitioner submitted a breakdown of the investments in its U.S. company, along with a bank statement and letter from the bank indicating that the beneficiary opened an account with [REDACTED] bank in New York in 2008. The petitioner submitted evidence of monetary transfers from 2009 and 2010 from the beneficiary's account in Israel to her account in New York. According to the petitioner's breakdown of the investments in its U.S. company, the transfers completed by the beneficiary were to [REDACTED] to purchase equipment and furniture for the U.S. entity that was actually established in July 2010.

In the RFE, the director advised the petitioner that it did not submit any documentation to support its claim that [REDACTED] is a qualifying legal entity. The director instructed the petitioner to submit evidence demonstrating ownership and control of the foreign entity.

In response to the RFE, the petitioner submitted a document from the State of Israel, Israel Tax Authority with partial translations handwritten in the margin. The document is a Notice of Registration with Israel Tax Authority, dated June 5, 1996, stating that in May of 1996, the beneficiary was registered as a Certified Public Accountant (CPA).

The petitioner also submitted a document from the State of Israel, V.A.T. Department with partial translations annotated in the margin. The document is a Registered Vendor Certificate, dated May 1, 1996, stating that the beneficiary is registered as a Vendor according to the V.A.T. law.

The director denied the petition, concluding, in part, that the petitioner did not establish that it has a qualifying affiliate relationship with the foreign entity. In denying the petition, the director found that the evidence presented appears to establish that the beneficiary is a self-employed vendor of accounting services in Israel and does not effectively establish that [REDACTED] is a business entity abroad. The director further found that the petitioner did not provide any of the evidence requested in the RFE to show that [REDACTED] is a legal entity abroad.

On appeal, the petitioner asserts that [REDACTED] is a legal entity in Israel, and thus eligible for the classification sought by statute. The petitioner states that “there is no statutory authority or caselaw in support of the proposition that a solo accounting practice cannot be a “business entity” for the purposes of L-1 employment.”

## 2. Analysis

Upon review, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer.

As a preliminary matter, we will address the petitioner's contention that it has a joint venture relationship with the foreign entity. USCIS accepts the interpretation that a 50-50 joint venture creates a subsidiary relationship for purposes of section 101(a)(15)(L) of the Act. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). In this case, the lack of documentation establishing the joint venture relationship and the purpose of the proposed joint venture, raises the question of the foreign entity's and the petitioner's actual intent to enter into any type of agreement. The petitioner did not submit any supporting evidence, such as a joint venture agreement, that would clarify the intent of the two parties. According to [REDACTED] meeting minutes, it intends to employ the petitioner as its CFO to perform all of its financial and accounting functions.

Despite the petitioner's indication that the two entities have a joint venture relationship, the petitioner's description of the ownership for both entities would suggest an affiliate relationship based on claimed common ownership by the beneficiary. However, the petitioner also has not established that it has an affiliate relationship with the beneficiary's foreign employer. 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 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 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.

In defining the nonimmigrant classification, the regulations specifically provide for the temporary admission of an intracompany transferee “to the United States to be employed by a parent, branch, *affiliate*, or subsidiary of [the foreign firm, corporation, or other legal entity].” 8 C.F.R. § 214.2(l)(1)(i) (emphasis added). The regulations define the term “affiliate” as “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.” 8 C.F.R. § 214.2(l)(1)(ii)(L).

In the instant matter, the petitioner did not submit sufficient evidence of an actual legal entity authorized to conduct business in Israel. The petitioner submitted registration documents specific to the beneficiary but did not explain or provide evidence to establish that the beneficiary herself is an independent legal entity authorized to conduct business in Israel as a recognized sole proprietor. On appeal, the petitioner appears to make this claim; however, the petitioner did not submit evidence to establish that the laws of business in Israel are such that the beneficiary's registration as a CPA and vendor of the V.A.T. Department, establishes her as a separate legal entity for business purposes. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). The petitioner has not established that the beneficiary owns and operates a sole proprietorship recognized as a legal entity in Israel.

Furthermore, the record does not contain sufficient evidence of the petitioner's ownership and control. The petitioner submitted copies of [REDACTED] meeting minutes indicating that it acquired 96 “ordinary shares,” which is 49%, of the petitioner's business. However, the petitioner is a limited liability company and as such, does not issue shares. The petitioner did not submit its certificate of formation or organization, operating agreement, certificates of membership interest or minutes of its membership and management meetings. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

Further, the petitioner simply made statements referencing the beneficiary's 51% ownership in the U.S. company, but again, did not submit any evidence of her ownership and control. As such, the record does not establish who owns and controls the petitioner. 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)).

For the reasons discussed above, the petitioner has not established by a preponderance of the evidence that a qualifying relationship exists between the U.S. company and the foreign entity. Accordingly, the appeal will be dismissed.

### C. Foreign Entity Doing Business

The next issue to be addressed is whether the petitioner established that a foreign entity has been engaged in the regular, systematic, and continuous provision of goods and/or services. Specifically, the regulation at 8

C.F.R. § 214.2(l)(1)(ii)(H) defines that term as:

*Doing business* means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

### 1. Facts

At the time of filing the petition, the petitioner did not provide evidence of an active business in Israel. As such, the director issued an RFE instructing the petitioner to submit evidence that the foreign entity continues to do business.

In response to the RFE, the petitioner submitted a letter from [REDACTED] C.P.A., dated September 10, 2014, stating that he has known the beneficiary for over 20 years and attesting to her specialized knowledge and employment at the foreign entity.

The petitioner submitted a document from the State of Israel, Israel Tax Authority with partial translations annotated in the margin. The document is a Notice of Registration with Israel Tax Authority, dated June 5, 1996, stating that in May of 1996, the beneficiary was registered as a Certified Public Accountant (CPA). The petitioner also provided a document from the State of Israel, V.A.T. Department with partial translations annotated in the margin. The document is a Registered Vendor Certificate, dated May 1, 1996, stating that the beneficiary is registered as a Vendor according to the V.A.T. law.

In addition, the petitioner submitted copies of the beneficiary's foreign bank statements, with partial translations annotated in the margin, for the period November 2013 through August 2014. The petitioner also submitted photographs of the foreign entity's physical premises in Israel. The photos depict a door with a keypad entry; a sign written in Hebrew with "C.P.A. (ISR)" visible; a stock room; and several desks with computer workstations and visible signs of work being performed.

The director denied the petition, concluding, in part, that the petitioner did not establish that the foreign entity has been engaged in the regular, systematic, and continuous provision of goods and/or services. In denying the petition, the director found that although the petitioner provided color photographs of the foreign entity's premises, as requested in the RFE, it did not provide any of the substantive documentary evidence requested to establish that the foreign entity is doing business. The director concluded that the photographs alone do not adequately establish that the foreign entity is doing business.

On appeal, the petitioner contends that the tax certificates, letterhead, and photographs provided demonstrate that the foreign entity has been conducting business in Israel. The petitioner further contends that the director's finding that the foreign entity is not doing business stems from the director's incorrect conclusion that the foreign entity is not a legal business entity in Israel.

### 2. Analysis

Upon review, the petitioner has not established that the foreign entity has been engaged in the regular,

systematic, and continuous provision of goods and/or services in accordance with the regulations. Specifically, under the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2) a petitioner must demonstrate that it is engaged in the regular, systematic, and continuous provision of goods or services 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.

In this matter, the record is not persuasive in establishing that the foreign entity has been, and currently is, doing business in Israel as defined above. The petitioner submitted CPA and V.A.T. Department vendor registrations for the beneficiary issued in 1996, several bank statements, and a letter from an unaffiliated third party in Israel. The petitioner did not submit invoices, a client list, letters from existing clients, or tax documents, etc., as evidence of the foreign entity's ongoing business dealings in Israel. Again, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Further, the photographs submitted as evidence of the foreign entity's physical premises show multiple workstations; however, the petitioner has also stated that the beneficiary is the foreign entity's sole employee. Moreover, the photographs evidently depict a CPA office, but the full name of the business depicted is in Hebrew. As such, it is unclear that the submitted photographs depict the foreign entity's actual business premises.

For the reasons discussed above, the petitioner has not established by a preponderance of the evidence that the foreign entity has been and is currently doing business in accordance with the regulations. Accordingly, the appeal will be dismissed.

#### D. Employment Abroad

The next issue to be addressed is whether the petitioner established that the beneficiary had at least one year of continuous full-time employment with a qualifying foreign entity within the three-year period preceding the beneficiary's admission to the U.S., as required by 8 C.F.R. § 214.2(l)(3)(iii).

##### 1. Facts

At the time of filing, the petitioner stated that the beneficiary commenced employment with the foreign entity on January 1, 1996. The petitioner submitted the beneficiary's resume indicating that from 2010 to the present, the beneficiary was employed by the petitioning U.S. company as "owner" and from 1996 to the present, the beneficiary was employed by the foreign entity, also as "owner."

The director issued a request for evidence ("RFE") on August 7, 2014, advising the petitioner that it did not submit any supporting documentation to corroborate the assertions pertaining to the beneficiary's employment abroad. The director instructed the petitioner to submit evidence satisfying this requirement, such as the beneficiary's pay records, personnel records, training records, a letter from the beneficiary's supervisor describing her experience with the foreign entity, and a letter from the foreign entity's Human Resource Department discussing the beneficiary's work history.

In response to the RFE, the petitioner submitted a letter from [REDACTED] C.P.A. (ISR), dated September 10, 2014, stating that he has known the beneficiary for over 20 years and attesting to her specialized knowledge and employment at the foreign entity.

The petitioner also submitted a document from the State of Israel, Israel Tax Authority with partial translations annotated in the margin. The document is a Notice of Registration with Israel Tax Authority, dated June 5, 1996, stating that in May of 1996, the beneficiary was registered as a Certified Public Accountant (CPA). In addition, the petitioner provided a document from the State of Israel, V.A.T. Department with partial English translations annotated in the margin. The document is a Registered Vendor Certificate, dated May 1, 1996, stating that the beneficiary is registered as a Vendor according to the V.A.T. law.

Finally, the petitioner submitted copies of the beneficiary's monthly bank statements, with partial translations annotated in the margin, for the period from November 2013 until August 2014. Each of the bank statements is annotated to state that there were two transfers or ATM withdrawals for the beneficiary.

The director denied the petition on November 6, 2014 concluding, in part, that the petitioner did not establish that the beneficiary worked for a qualifying foreign entity for one continuous year in the three years preceding the filing of the petition. In denying the petition, the director found that the evidence submitted does not adequately establish that the beneficiary has one continuous year of full-time employment abroad with a qualifying organization. The director further found that the petitioner did not submit any of the evidence requested in the RFE to establish the beneficiary's eligibility with respect to this requirement.

On appeal, the petitioner asserts that the beneficiary was employed by the foreign entity for one continuous year within the three years preceding the filing of the petition.

## 2. Analysis

Upon review, we find that the petitioner has not established that the beneficiary had at least one year of continuous full-time employment with a qualifying foreign entity within the three-year period preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(3)(iii).

As discussed above, the petitioner has not submitted evidence to establish that [REDACTED] is a legal entity in Israel or that there is a qualifying organization doing business in Israel. However, even if the petitioner had established that the beneficiary owns a bona fide sole proprietorship business in Israel, additional evidence would be required to fulfill this requirement.

Here, the petitioner simply states that the beneficiary was employed by the foreign entity from January 1996 to the present. The petitioner submitted the beneficiary's resume reflecting the same dates for her employment at the foreign entity along with documents from the State of Israel certifying that the beneficiary has been registered as a CPA and as a vendor of the V.A.T. Department since 1996. These documents, however, are not evidence of the beneficiary's employment at a qualifying foreign entity. They simply authorize the beneficiary to practice as a CPA in Israel.

The petitioner also submitted copies of bank statements for an account it claims belongs to the foreign entity. The bank statements are in the beneficiary's name and have been partially translated by the beneficiary. She has made annotations next to transactions where she asserts the foreign entity transferred money to her or she withdrew money from an ATM. These documents are also not evidence of the beneficiary's employment at a qualifying foreign entity as they do not demonstrate that transactions alleged to be transfers to the beneficiary are wages paid for her employment at the foreign entity.

Further, the letter from [REDACTED] C.P.A. (ISR), dated September 10, 2014, is also not sufficient evidence of the beneficiary's employment at the foreign entity. [REDACTED] is not an employee of the foreign entity, nor does he appear to be affiliated with the foreign entity in any way. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

For the reasons discussed above, the petitioner has not established by a preponderance of the evidence that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization. Accordingly, the appeal will be dismissed.

#### E. U.S. Entity Doing Business

The final issue to be addressed is whether the petitioner established that it is a qualifying organization doing business in the United States.

##### 1. Facts

On the Form I-129, where asked to describe the petitioner's type of business, the petitioner stated, "specialized accounting and management." The petitioner listed its company address as [REDACTED] New York and indicated that the beneficiary's work location would be the same.

The petitioner submitted its IRS Forms 1120, for 2012 and 2013, indicating that it had gross receipts or sales of \$5,645 in 2012 and \$18,196 in 2013.

The petitioner submitted a breakdown of the investments in its U.S. company, along with a bank statement and letter from the bank indicating that the beneficiary opened an account with [REDACTED] bank in New York in 2008. The petitioner submitted evidence of monetary transfers from 2009 and 2010 from the beneficiary's account in Israel to her account in New York. According to the petitioner's breakdown of the investments in its U.S. company, the transfers completed by the beneficiary were to [REDACTED] to purchase equipment and furniture for the U.S. entity that was actually established in [REDACTED].

The petitioner also submitted a copy of Meeting Minutes for [REDACTED], dated January 1, 2014, appointing the petitioner as the CFO of [REDACTED] who "shall be wholly responsible for all bookkeeping, accounting, tax returns, financial planning, investments and financial reporting for [REDACTED]"

The petitioner did not submit any information explaining or clarifying its actual business or day-to-day

functions in the record. The petitioner also did not submit a lease agreement to demonstrate that it has acquired sufficient physical premises to conduct its business.

In the RFE, the director advised the petitioner that the evidence does not adequately demonstrate that the U.S. entity engages in the regular, systematic, and continuous provision of goods and services up to the filing date of the petition. The director instructed the petitioner to submit evidence that it continues to do business in the United States.

In response to the RFE, the petitioner submitted copies of two bank statements from [REDACTED] for an account in the petitioner's business name for the months of March 2010 and January 2012. The petitioner also submitted a document titled Transactions by Account; however, each of the nine listed transactions took place between February and March 2010 and January to November 2012.

The petitioner also submitted photographs of its claimed physical premises in the United States. The photos include the following:

- Two photos of a desk with a computer monitor on it and a copy machine to the side of the desk. There are two chairs in front of the desk and one chair behind the desk. The desk is clean of any paperwork or other evidence of work actually conducted in the office.
- Two photos of what appears to be a sitting area with a small couch and two chairs.

The director denied the petition, concluding, in part, that the petitioner did not establish that it is engaged in the regular, systematic, and continuous provision of goods and/or services. In denying the petition, the director found that the petitioner did not provide any of the evidence requested in the RFE to demonstrate that the U.S. entity conducted business activities during 2014.

On appeal, the petitioner does not address this finding in the director's decision.

## 2. Analysis

Upon review, the petitioner has not established that the U.S. company is engaged in the regular, systematic, and continuous provision of goods and/or services in accordance with the regulations. Specifically, under the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2) a petitioner must demonstrate that it is engaged in the regular, systematic, and continuous provision of goods or services 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.

In this matter, the record is not persuasive in establishing that the U.S. company has been, and currently is, doing business in the United States as defined above. The petitioner submitted its IRS Forms 1120 for 2013, indicating that it had gross receipts or sales of \$18,196. The bank statements submitted were all dated 2010 and 2012. The petitioner did not submit any evidence of recent business transactions. The petitioner did not submit invoices, a client list, letters from existing clients, or recent tax documents, etc., as evidence of its ongoing business dealings in the United States. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Accordingly, the petitioner has not established by a preponderance of the evidence that it has been and is currently doing business in accordance with the regulations. Accordingly, the appeal will be dismissed.

### III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. 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.