



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF B- LLC

DATE: DEC. 16, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a printing firm, seeks to extend the Beneficiary's temporary employment as its CEO under the L-1A nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner, a Florida corporation, claims to be a subsidiary of the Beneficiary's foreign employer in the United Kingdom. It seeks to extend the Beneficiary's status for an additional two years so that he may continue to serve as its "C.E.O."

The Director denied the petition, concluding that the Petitioner did not establish 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 us for review. On appeal, the Petitioner asserts that the evidence of record establishes that a qualifying relationship exists between the United States employer and the Beneficiary's foreign employer in the United Kingdom. The Petitioner submits additional evidence in support of the 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 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, 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.

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, among other items: "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."

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[.]
- .....
- (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;

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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.

## II. THE ISSUE ON APPEAL

The sole issue to be discussed in the present matter is whether the Petitioner has established that a qualifying relationship exists with the Beneficiary's overseas employer. 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).

### A. Facts

On the L Classification Supplement to Form I-129, the Petitioner checked box "c" in Section 1, indicating that the U.S. company is a subsidiary of [REDACTED] the company abroad. Regarding the ownership of the two entities, the Petitioner stated that both the foreign and the United States entity were owned and controlled as follows: "50/50 [REDACTED] )"

The Petitioner provided evidence of ownership of the foreign entity in the form of a Partnership Agreement dated May 24, 2001. The agreement states that the Members consist of [REDACTED] (also known as [REDACTED] and [REDACTED]. The agreement reflects that both Members made a capital contribution of £10,000.00 GBP. The agreement stated the following regarding control of the partnership:

5. The Venture will be directed, controlled and managed by a management committee (the "Management Committee"). Within the limits of the terms of this Agreement, the Management Committee will have full authority to bind the Members in all matter relating to the direction, control and management of the Venture. Authority to bind the Venture in contract or in any third party business relation lies exclusively with Management Committee, or its delegate.

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According to the agreement, each Member has a vote in the Management Committee and each vote carries “equal weight.” No evidence pertaining to the ownership of the U.S. entity was submitted in support of the petition.

In a request for evidence (RFE) issued on November 4, 2014, the Director requested, among other items, evidence regarding ownership and control of the U.S. entity and the foreign entity. The Director noted that the evidence submitted in the initial petition did not establish ownership of the United States entity.

In response to the RFE, the Petitioner resubmitted a copy of the Partnership Agreement submitted in the initial petition. Regarding the foreign entity, the Petitioner also provided a copy of the Extension of the Partnership Agreement, dated May 24, 2011. The agreement reflected the same ownership and control of the foreign entity as set forth in the original partnership agreement dated May 24, 2001.

As evidence of ownership of the United States operation, the Petitioner submitted the Articles of Organization and Operating Agreement for the company. The Operating Agreement, dated April 6, 2009, showed that the members are [REDACTED] and [REDACTED]. The agreement reflected that [REDACTED] made a capital contribution of \$55,000 and his contribution description is as follows: “[REDACTED] is the managing member and will have overall financial and executive control.”

The agreement also shows that [REDACTED] made a capital contribution of \$45,000 and is listed as “PARTNER.”

The Director denied the petition on April 22, 2015. The Director found that the Petitioner had not established that a partnership is recognized in the United Kingdom as a legal entity, noting that the partnership agreement demonstrates that the foreign entity is a 50/50 joint venture. The Director also noted that the Petitioner submitted conflicting information regarding ownership of the United States entity. Specifically, the Director noted that the Petitioner’s statement on the Form I-129 Supplement, where it claimed that it was owned 50/50 by the Beneficiary and [REDACTED] was contradicted by the documents submitted in response to the RFE, which indicated that the Beneficiary owned 55% of the Petitioner and is its managing member, and that [REDACTED] owned 45%.

On appeal, the Petitioner contends that the Director erred in the denial. The Petitioner states that a partnership is a legally recognized entity and submitted an “ADDENDUM to Partnership Agreement” consisting of a “Statement of Partners’ controlling shares” including the United States “affiliate.” The Addendum, dated April 6, 2013, states that the foreign entity is owned 50/50 by each partner and that the United States entity is owned 55% by the Beneficiary and 45% by [REDACTED].

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As evidence that the “Partnership” is a legally recognized entity in the United Kingdom, the Petitioner also submitted a HM Revenue & Customs Partnership Tax Return for the year ending April 5, 2014.

B. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, we find that the Petitioner has not established that a qualifying relationship exists between the U.S. entity and the foreign entity.

As a preliminary matter, we find that the Petitioner submitted sufficient evidence on appeal to establish that a partnership is a legally recognized entity in the United Kingdom. Consequently, the Director’s comments to the contrary are withdrawn.

Turning now to the ownership and control of the entities, we note that the Petitioner claims on the L Supplement to Form I-129 that the United States entity is a subsidiary of the foreign entity. The foreign entity’s HM Revenue & Customs Partnership Tax Return also states that the United States entity is owned by ‘[REDACTED] the Partnership in the UK.’ The Petitioner’s Operating Agreement, however, reflects that the United States entity is owned not by [REDACTED], but rather by two individuals: the Beneficiary and his partner. As such, the Petitioner has not provided consistent evidence to show that the United States organization qualifies as a subsidiary for the purposes of this petition. Therefore, our analysis will focus on whether the foreign partnership and United States company qualify as affiliates for L-1A purposes.

If one individual owns a majority interest in the petitioner and the foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the regulatory definition even if there are multiple owners. *See* 8 C.F.R. 214.2(l)(1)(ii)(L)(I).

The documents submitted in support of the petition contradict the Petitioner’s statement on the Form I-129 L Supplement that the United States entity is owned and controlled equally by the Beneficiary and his partner, [REDACTED]. Rather, the Operating Agreement submitted in response to the RFE and the Addendum to Partnership Agreement submitted on appeal show that the United States entity is owned and controlled 55% by the Beneficiary and 45% by [REDACTED]. 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).

Assuming that the United States entity is owned and controlled 55% by the Beneficiary, the foreign entity’s ownership and control structure prohibit a finding that the two entities have a qualifying relationship.

To establish eligibility in this case, it must be shown that the foreign employer and the petitioning entity share common ownership and control. Control may be “de jure” by reason of ownership of 51

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percent of outstanding stocks of the other entity or it may be “de facto” by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm’r 1982). In order to establish “de facto” control of both entities by an individual, the petitioner must provide agreements relating to the control of a majority of the shares’ voting rights through proxy agreements. *Id.* at 293.

Neither partner in the foreign partnership holds a majority ownership or control. The partnership agreement and partnership addendum both show that the Beneficiary and [REDACTED] hold equal ownership and voting rights. Absent documentary evidence such as voting proxies or agreements to vote in concert so as to establish a controlling interest, the Petitioner has not established that the same individual owns and controls both the United States and the foreign entity.

Thus, the companies are not affiliates as both companies are not owned and controlled by the same individuals, nor are both entities owned and controlled by the same group of individuals, with each individual owning and controlling approximately the same share or proportion of each entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L). Based on the evidence submitted, it is concluded that the Petitioner has not established that it has a qualifying relationship with the Beneficiary’s foreign employer.

### III. CONCLUSION

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 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of B- LLC*, ID# 15022 (AAO Dec. 16, 2015)