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

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

MATTER OF M-U.S.A., INC.

DATE: DEC. 16, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a Florida corporation engaged in the service and repair of marine equipment, seeks to extend the Beneficiary's classification as an L-1A nonimmigrant intracompany transferee. *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 claims to be an affiliate of [REDACTED] located in [REDACTED] French West Indies. The Petitioner now seeks to extend the Beneficiary's employment as a Marine Engineer Manager for a period of two years.

The Director denied the petition on two separate grounds, concluding that the Petitioner did not establish that (1) a qualifying relationship exists between the U.S. company and the foreign entity, and (2) the foreign entity is doing business abroad.

On appeal, the Petitioner contends that the Director's decision is erroneous because it had requested additional time to submit the requested evidence but the Director issued an unfavorable decision regardless. The Petitioner asserts that it has a qualifying relationship with the foreign entity. The Petitioner submits a brief and 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.

II. THE ISSUES ON APPEAL

A. Qualifying Relationship

The first issue addressed by the Director is whether the Petitioner established that the Beneficiary's foreign employer and the U.S. company 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

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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 July 28, 2014. On the L Classification Supplement to the Form I-129, the Petitioner identified the Beneficiary's last foreign employer as [REDACTED] and stated that the U.S. company is an affiliate of the foreign entity. In its letter of support, dated July 14, 2014, the Petitioner described its qualifying relationship with the foreign entity as follows:

Mr. [REDACTED] presently owns 32% of the Foreign Business Entity which represents a blocking minority pursuant to the Foreign business Entity's Article no. 12, section 2, paragraph 2 of its Articles of Organization wherein it is stated in French what follows in English, to wit, 'they [shares] cannot be assigned for valuable consideration or cannot be conveyed without consideration to a third person outside the company without the consent of the majority of number of shareholders representing at least three fourths of all shares of stock. This majority is determined however taking in consideration the person and the shares of the assigning shareholder or assigner.' This is clearly stipulated in the Assignment Agreement . . . within the Articles of organization of the French Limited Liability Company, [the foreign entity].

Mr. [REDACTED] has 40% of the U.S. Company. . . . Therefore, it ensues that the Foreign Business Entity and the United States Business Entity are affiliates. They are both owned by [REDACTED]. The affiliate limited liability company, the Foreign Business Entity . . . continues to do business in [REDACTED] French West Indies, FRANCE as a leader in services in the high-end yachts industry.

The Petitioner submitted its Articles of Incorporation, dated August 7, 2002, indicating that it is authorized to issue a total of 500 shares of common stock at a par value of \$1.00 per share.

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The Petitioner submitted its 2012 and 2013 IRS Form 1120S, U.S. Income Tax Return for an S Corporation. In 2012, the Petitioner's Form 1120S shows that it paid \$548,260.00 in compensation of officers and the attached Schedules K-1, Shareholder's Share of Income, Deductions, Credits, etc., show that [REDACTED] owned 40% of the company's common stock, [REDACTED] owned 40% of the company's common stock, and [REDACTED] owned 20% of the company's common stock.

In 2013, the Petitioner's Form 1120S shows that it paid \$559,830.00 in compensation of officers and the attached Form 1125-E, Compensation of Officers, and Schedules K-1 show that [REDACTED] owned 40% of the company's common stock, [REDACTED] owned 40% of the company's common stock, and [REDACTED] owned 20% of the company's common stock.

The Petitioner submitted the foreign entity's By Laws, dated October 3, 2003, describing the foreign entity's "partnership capital" in Article 9 as follows:

The partnership capital is fixed at the sum of 7 800 euros.

It is divided into 500 shares of 15.60 euros each, numbered from 1 to 500, granted to associates in proportion to their contributions, namely:

Mrs. [REDACTED] holding [180] shares, numbered from 1 to 180, being . . . 180 shares.

Mrs. [REDACTED] holding [160] shares, numbered from 180 to 340, being . . . 160 shares.

Mr. [REDACTED] holding [160] shares, numbered from 341 to 500, being . . . 160 shares.

Total number of shares being equal to the total company capital: Five hundred shares.

The Petitioner submitted a document titled "Minutes of the Special Meeting of the 22ND Day of October, 2007, Defining the Final Modifications Made to the Statutes," redistributing the foreign entity's partnership shares as follows:

- On the 22ND October 2007 . . . Mr. [REDACTED] has ceded to Mr. [REDACTED], 80 shares of 15.60 Euros each that belonged to him in the said company.
- As a consequence to the said company, article N° 9 of the statutes is modified as below:

Article n°9 – SHARES

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The shares are attributed and divided as follows:

- Mrs. [REDACTED] to be designated [180] shares, numbered from 1 to 180,
To wit . . . 180 shares.
- Mrs. [REDACTED], to be designated [160] shares, numbered from 181 to 340
To wit . . . 160 shares.
- Mr. [REDACTED], to be designated [80] shares, numbered from 341 to 420
To wit . . . 80 shares.
- Mr. [REDACTED] to be designated [80] shares, numbered from 421 to 500
To wit . . . 80 shares

The total equals the number of shares comprising the capital: Five hundred shares.

The Petitioner submitted a letter from [REDACTED] dated July 3, 2008, confirming that he “has agreed to transfer his shares in [the foreign entity] to Mr. [REDACTED] residing . . . [in] [REDACTED] Florida.”

The Petitioner also submitted a document titled “Agreement for the Transfer of Corporate Shares,” dated September 1, 2009, redistributing the foreign entity’s partnership shares as follows:

[T]he corporate capital of the company is subdivided into 500 shares of 15.60 euros each.

....

1. Transfer of shares. Mr. [REDACTED] transfers and hands over the 80 shares worth 15.60 euro each base value, with guarantees and by right, to Mr. [REDACTED], who has in turn accepted them.
2. Conditions of transfer. Mr. [REDACTED] is now owner of all company securities transferred as from this day with all the rights thereof. . . .
3. Price . . . In addition, the present transfer is agreed and concluded upon the payment of 1 symbolic Euro that Mr. [REDACTED] has paid to Mr. [REDACTED] who acknowledges this fact and has issued him a valid receipt.

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6. Approval of Mr. [REDACTED] (the transferor). As provided for in the BY-Laws, on the transfer of shares in the interest of third parties must be subjected to an approval by the majority of the shareholders representing at least three quarters of the all the shares of the company. For this purpose, the consent of Mrs. [REDACTED] and Mrs. [REDACTED] (all associates of the company) must be sought. These two being the only associates of Mr. [REDACTED], the undersigned, hereby accepts the transferee as a new associate.

The Petitioner submitted the foreign entity's Corporate Tax, dated October 10, 2012, for the period ending on December 31, 2011, specifically listing its members as follows:

Name, Surname and position. . .	Number of shares owned by an associate
[REDACTED]	180
[REDACTED]	160
[REDACTED]	160

The Director issued a request for evidence (RFE) on September 11, 2014, advising the Petitioner that the evidence currently in the record did not establish a qualifying relationship between the Beneficiary's foreign employer and the U.S. petitioning company. Specifically, the Director advised the Petitioner that the documentation submitted did not show that any one individual owns a majority interest in both the U.S. and foreign entities, nor did the documentation show that the U.S. and foreign entities are owned and controlled by the same group of individuals. The Director instructed the Petitioner to submit evidence demonstrating common ownership and control of both entities in order to establish a qualifying relationship.

In response to the RFE, the Petitioner submitted a letter, dated December 5, 2014, requesting additional time in order to properly respond to the Director's request. The Petitioner cited an Act of God, a category 3 hurricane that passed through [REDACTED] on [REDACTED] and the "change of legal and administrative status of the [REDACTED] after February 22, 2007 from a dependency of the [REDACTED] into a French Oversees [*sic*] Territorial Collectivity" as its reasons for an extension request and submitted duplicate copies of previously submitted evidence.

The Director denied the petition on February 13, 2015, concluding, in part, that the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's foreign employer. The Director acknowledged the Petitioner's request for an extension to provide the requested evidence and noted that the regulations, at 8 C.F.R. § 103.2, prohibit U.S. Citizenship and Immigration Services (USCIS) from extending the period of time allowed to respond to a request for evidence. In denying the petition, the Director found that [REDACTED] owned 40% of the U.S. company and, at most, 32% of the foreign entity, and therefore, the Petitioner did not demonstrate that he owns and controls both entities or that the same group of individuals owns and controls approximately the same share or proportion of each entity.

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On appeal, the Petitioner first states that the Director's decision is erroneous because it had requested additional time to submit the requested evidence. The Petitioner did not acknowledge the Director's notes on the regulatory prohibition for USCIS to allow an extension of time for submitting requested evidence. The Petitioner submits its response to the RFE on appeal.

Specifically, the Petitioner submits a letter, dated April 13, 2015, stating the following about its qualifying relationship with the foreign entity:

Please kindly note that the previously submitted Agreement for the transfer of shares dated September 1, 2009 and the Letter of share transfer dated July 3, 2008 reflect the shareholders composition of the Foreign Business Entity and thus, [REDACTED] owns 160 shares of [the foreign entity] even though the necessary changes on the French tax forms database in [REDACTED] have not been properly effected.

The Petitioner submits a second letter, dated April 15, 2015, advising that it is attaching the U.S. company's stock certificates that were not included with the previously submitted evidence. The Petitioner submits copies of Share Certificates numbers one, two, and three, each dated August 15, 2002, and issued to [REDACTED] for 40 shares of common stock, [REDACTED] for 40 shares of common stock, and [REDACTED] for 20 shares of common stock, respectively.

2. Analysis

Upon review, the Petitioner has not established that it has a qualifying affiliate 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 (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.

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

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the other entity or it may be “de facto” by reason of control of voting shares through partial ownership and possession of proxy votes. *See Matter of Hughes*, 18 I&N Dec. at 293.

Here, the petitioning U.S. company is owned by three individuals and the largest percentage of individual ownership interest is 40%. Therefore, no one individual controls the U.S. company such that majority ownership and control can be established. The Petitioner also has not submitted evidence of any agreements that would establish that two of the three individuals would always vote in concert, thus establishing majority control over the U.S. company. Further, the foreign entity is also owned by three different individuals and the largest percentage of individual ownership interest is 36%, also demonstrating that no one individual controls the foreign entity such that majority ownership and control can be established. Moreover, although both companies share one common owner, [REDACTED] he does not own a majority interest or control either entity. Although he owns 40% of the U.S. company and 32% of the foreign entity, his mere ownership of shares in both entities does not establish a qualifying relationship. Absent documentary evidence such as voting proxies or agreements to vote in concert with another shareholder in either entity, the Petitioner has not established that any one individual, or group of individuals, effectively owns *and* controls the U.S. company in order to establish an affiliate relationship with the foreign entity. 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)).

On appeal, the Petitioner did not address the Director’s findings. Instead, the Petitioner simply focused on establishing that [REDACTED] owns 160 shares of the foreign entity, although his ownership of those 160 shares still does not establish that he owns a majority interest in the foreign entity.

Based on the evidence in the record, the Petitioner has not established that the two entities qualify as affiliates as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(L). Accordingly, the appeal will be dismissed.

B. Foreign Entity Doing Business

The second issue addressed by the Director is whether the Petitioner established that it is a qualifying organization doing business in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary, as required by 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). Specifically, the Director found that the evidence of record was insufficient to establish that the foreign entity was doing business.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines the term “doing business” as follows:

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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

In its initial letter of support, dated July 14, 2014, the Petitioner described the foreign entity as follows:

[The Petitioner] is an affiliate of the [REDACTED] (limited liability company) transacting business from [REDACTED] French West Indies, France since its inception in 1992.

....

[The Petitioner] was originally established to export and provide support for [REDACTED] for all their warranty work and parts supplies. The [REDACTED] group of companies are family-run companies.

....

[REDACTED] was established in [REDACTED]. . . . In [REDACTED] re-invented itself this time as a complete engine rebuild and machine shop where the following work was performed and produced: rebuild and repair all makes and models of diesel engines and generators; repair, design and install hydraulics pumps – fresh & raw water repaired, and remanufactured; air conditioning & refrigeration repairs; installations and designs; heavy duty construction equipment – repairs; custom machinery techniques; fabrication and design of parts in all metals and plastics; remanufacture blocks, heads, brakes, discs, brake drums and other parts; weld all metals & custom designs; fabrication of marine & household accessories in stainless steel, aluminum and steel; custom pipe work in all types of materials; marine, commercial and industrial generator removal, installation and design; marine, commercial and industrial engine removal, installation and design; and engine alignment. [REDACTED] is also under current contract by the [REDACTED] on [REDACTED] and surrounding islands to do their machine work, both in house machining and on site machining using portable machining equipment.

In an effort to demonstrate that the foreign entity is doing business, the Petitioner submitted a copy of the foreign entity's Registration to the Trade and Companies Registry, dated February 9, 2012, modifying the company's managers. The Petitioner submitted the foreign entity's Corporate Tax, dated October 10, 2012, for the period ending on December 31, 2011.

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The Petitioner also submitted bank statements from [REDACTED] in [REDACTED] addressed to “[REDACTED]” at an address in [REDACTED], Florida, United States for May and June of 2014.

The Petitioner also submitted copies of invoices from the foreign entity to four different clients, dated January 6, 2012, February 3, 2012, June 12, 2012, and August 14, 2012. The Petitioner also submitted two [REDACTED] shipment receipts from the U.S. company to the foreign entity, dated June 12, 2012 and August 13, 2012. Finally, the Petitioner submitted additional invoices from 2010 and 2011 for the foreign entity.

In the RFE, the Director advised the Petitioner that all of the submitted invoices predate the filing of the instant petition, and the more recent information from 2014 does not demonstrate that the foreign entity is currently doing business. The Director instructed the Petitioner to submit evidence to satisfy this requirement.

In response to the RFE, the Petitioner submitted a letter, dated December 5, 2014, requesting additional time in order to properly respond to the Director’s request. As noted previously, the Petitioner cited an Act of God, a category 3 hurricane that passed through [REDACTED] and the “change of legal and administrative status of the [REDACTED] after February 22, 2007 from a dependency of the [REDACTED] into a French Oversees [*sic*] Territorial Collectivity” as its reasons for an extension request and submitted duplicate copies of invoices previously submitted with the petition.

The Director denied the petition concluding, in part, that the evidence of record did not establish that the foreign entity is currently doing business abroad. In denying the petition, the Director found that the Petitioner’s evidence pertaining to the foreign entity’s business transactions was not probative, since all documents and invoices were dated on or before August 2012 and the Petitioner did not provide more recent documentation as specifically requested in the RFE.

On appeal, the Petitioner first states that the Director’s decision is erroneous because it had requested additional time to submit the requested evidence. The Petitioner did not acknowledge the Director’s comments on the regulatory prohibition for USCIS to allow an extension of time for submitting requested evidence. The Petitioner then submits its response to the RFE on appeal.

The Petitioner submits a letter, dated April 13, 2015, addressing the Director’s decision pertaining to the foreign entity doing business as follows:

Here, the petitioner established that it provides services to its foreign affiliate by marketing the foreign entity’s products, locating buyers, maintaining relationships with customers, and facilitating the completion of sales contracts and shipping arrangements in the United States. [Citing *Matter of Leacheng International, Inc.*, 26 I&N Dec. 532 (AAO 2015).]

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The Petitioner submits the following evidence in support of the appeal:

- A web page print out from [REDACTED] of an article titled, "[REDACTED] is based in [REDACTED]" dated June 1, 2009, and printed April 14, 2015.
- A web page print out from [REDACTED] listing contact information for [REDACTED], printed on April 14, 2015.
- A web page print out from "[REDACTED]" showing that [REDACTED] has a [REDACTED] profile, printed on April 14, 2015.
- A web page print out from "[REDACTED]" including information about the company's history, printed on April 14, 2015.
- A copy of an email from [REDACTED] for travel on March 27, 2015 for [REDACTED] (an otherwise unidentified person), printed by [REDACTED].
- Various invoices, receipts, a quotation, and an estimation from and for the foreign entity, all with dates within 2012.
- Various emails and invoices from the Petitioner, dated in 2014 and 2015, submitted to establish that the U.S. company is currently doing business.

2. Analysis

Upon review, the minimal documentation of the foreign entity's business operations is insufficient to establish that the foreign entity continues to do business as a qualifying organization abroad.

In the instant matter, all of the Petitioner's evidence in support of the foreign entity's current business operations is dated 2012 or earlier, prior to the filing of the instant petition. When the Director advised the Petitioner of the outdated documentation and requested current documentation to establish that the foreign entity continues to do business, the Petitioner disregarded the Director's instruction and submitted copies of the same evidence previously submitted with the petition. In her decision, the Director again notified the Petitioner of the deficient information and concluded that the evidence in the record did not establish that the foreign entity continues to do business abroad.

On appeal, the Petitioner focuses on its current business operations in the United States and, again, did not submit current evidence to demonstrate that the foreign entity continues to do business abroad. Rather, although the Petitioner submitted evidence of the foreign entity's business operations, such as invoices and receipts that had not been previously submitted, all of said evidence was dated 2012 or earlier. While the Petitioner continually asserts that the foreign entity is doing business, insufficient documentary evidence to support this contention has been submitted. As such, the Petitioner has not demonstrated that the foreign entity continues to do business abroad, as of the date of filing the instant petition. As noted previously, 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.

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Based on the deficiencies discussed above and the lack of evidence of the foreign entity's current business operations, the Petitioner has not established that foreign has been and will continue to do business abroad. The Petitioner, therefore, has not established that it is a qualifying organization doing business in the U.S. and in at least one other country as required by 8 C.F.R. § 214.2(l)(1)(ii)(G)(2).

III. CONCLUSION

When we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1037 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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, 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, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of M-U.S.A., Inc.*, ID# 15009 (AAO Dec. 16, 2015)