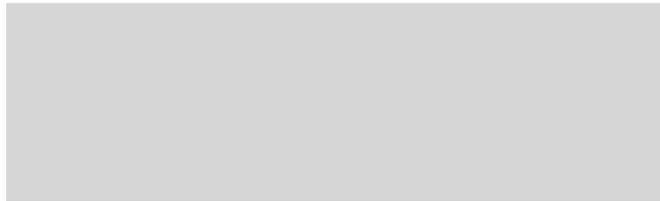




U.S. Citizenship
and Immigration
Services

(b)(6)



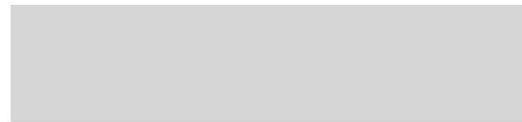
DATE: JUL 21 2015

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

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 The director's decision will be withdrawn and the matter will be remanded to the service center for further action and entry of a new decision.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking to classify the beneficiary as an L-1A 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 Chinese company, states it is the parent company of [REDACTED], a New Jersey limited liability company established in [REDACTED]. The petitioner seeks to transfer the beneficiary to the U.S. company to serve as its general manager for a period of one year.

The director denied the petition, finding that the petitioner did not establish that the beneficiary will be employed in a qualifying managerial or executive capacity within one year. Further, the director concluded that the petitioner did not establish that it had secured sufficient premises to house its new office.

On appeal, the petitioner contends that the director's decision was incorrect based on the evidence of record and therefore made in error. The petitioner asserts that it submitted a commercial lease for office premises that are sufficient to accommodate the U.S. entity's travel services business, as well as evidence that the U.S. entity will grow to support a qualifying managerial or executive position within one year.

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 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. ELIGIBILITY AS A NEW OFFICE

The first issue to be addressed is whether the director properly adjudicated this Form I-129 pursuant to the regulations applicable to "new offices."

Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(F), "new office" means an organization which has been doing business in the United States through a parent, branch, affiliate or subsidiary for less than one year.

The evidence of record indicates that [REDACTED] was established as a New Jersey limited liability company on [REDACTED]. The petitioner states that this company "has provided travel service since [REDACTED] mainly to the Chinese tourists in the United States." The petitioner provided a copy of the U.S. entity's 2013 IRS Form 1065, U.S. Return of Partnership Income, which indicates that it had gross receipts or sales of \$117,240. The Chinese petitioner indicates that it acquired a 70 percent interest in the U.S. entity in October 2013. The petitioner filed the Form I-129 petition on October 31, 2013, and marked on the petition that the beneficiary is coming to the United States to open a "new office."

The director determined that the U.S. entity is considered a "new office" based on the change in ownership structure, notwithstanding the fact that the petitioner indicates that its claimed subsidiary has been operating in the United States for approximately six years at the time of filing. We disagree with the director's determination. The U.S. entity for which the beneficiary will work has been doing business in the United States for more than one year and is not a "new office" as that term is defined in the regulations.

Nevertheless, in adjudicating the petition, the director applied the regulations applicable to new offices at 8 C.F.R. § 214.2(l)(3)(v) to the facts of this case, and determined that the petitioner had not satisfied the regulatory requirement at 8 C.F.R. § 214.2(l)(3)(v)(A), which requires the petitioner to establish that the new office has secured sufficient physical premises to house its operations, and had not established that the new office would support a managerial or executive position within one year, as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

As the U.S. entity does not qualify as a new office, the director's findings will be withdrawn and the matter will be remanded to the director, who is instructed to re-adjudicate this matter in accordance with the statute and regulations applicable to petitions for existing offices. The petitioner is required to establish that the U.S. company, at the time of filing, was capable of employing the beneficiary in a managerial or executive capacity as those terms are defined at section 101(a)(44) of the Act. The director may request any additional evidence deemed necessary in order to adjudicate the petition.

III. QUALIFYING RELATIONSHIP

Although not addressed in the director's decision, the record as presently constituted does not contain sufficient evidence to establish a qualifying relationship between the petitioning Chinese entity and its claimed U.S. subsidiary.

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 petitioner stated on Form I-129 that it owns 70 percent of the U.S. company. In its letter in support of the petition, the petitioner stated "[w]e have made initial monetary contribution to our US subsidiary," but did not specify what amount it paid for its claimed membership interest in the U.S. limited liability company.

The petitioner submitted: (1) the U.S. company's certificate of formation indicating that the company was established in New Jersey under the name [REDACTED] on [REDACTED] and listing [REDACTED] as the sole member/manager; (2) the U.S. company's Certificate of Amendment indicating that [REDACTED] changed its name to [REDACTED] on May 23, 2013; and (3) the U.S. company's Certificate of Amendment dated October 18, 2013 which indicates that the members/managers are the petitioner and [REDACTED].

The petitioner also submitted the U.S. company's operating agreement dated September 23, 2013, which states that it supersedes any prior operating agreements. This document sets forth the company's ownership as follows: [REDACTED] - 70 percent; [REDACTED] - 20 percent; and [REDACTED] - 10 percent. The operating agreement indicates that the former members were Mr. [REDACTED] and Ms. [REDACTED] and that the new managing member will be the beneficiary, acting as the petitioner's representative.

The operating agreement also indicates that the petitioner would make an initial capital contribution of \$3,000, while Mr. [REDACTED] would contribute \$800 and Ms. [REDACTED] would contribute \$500. The petitioner stated that it was submitting copies of the U.S. entity's bank statements as evidence of its investment in the U.S. company. The petitioner submitted a copy of the U.S. company's bank statement for the month of September 2013, but this statement did not show any wire transfers from the petitioner.

The bank statements show that the petitioner wire transferred \$5,985 to the U.S. company in October 2013 and \$49,980 to the U.S. company in May 2014, but both transactions were designated as payment for "tour fee."

Finally, the record contains a copy of the U.S. company's IRS Form 1065, Return of Partnership Income, for 2013. The Form 1065 indicates that there were a total of two owners during the tax year, and does not include copies of the Schedules K-1 identifying those owners. The petitioner also indicated at Schedule B of the Form 1065 that no foreign or domestic corporation, partnership, trust or any foreign government owns directly or indirectly an interest of 50 percent or more in the profit, loss or capital of the LLC.

Upon review, the evidence submitted is not sufficient to establish that the petitioner owns a controlling interest in the U.S. company.

As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

Here, the petitioner submitted an operating agreement indicating that the U.S. company has three members, and a certificate of amendment and an incomplete tax return which indicate that the U.S. company has two members. The petitioner has not submitted copies of the U.S. entity's membership certificates or provided evidence specifically identifying the ownership of the U.S. entity at the time of the petitioner's claimed acquisition of its 70 percent interest.

In addition, as ownership is a critical element of this visa classification, USCIS may reasonably inquire beyond the identification of a member of an LLC into the means by which this membership interest was acquired. Evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for the membership interest. The evidence submitted to date does not document the transfer of funds from the petitioner to the U.S. company in exchange for its claimed majority ownership interest in the company. Additional supporting evidence would include the U.S. company's articles of association, minutes of relevant membership or management meetings, or other legal documents governing the acquisition of the ownership interest.

Overall, the evidence of record with respect to the ownership of the U.S. company is inconsistent and incomplete. As this matter will be remanded, the director is instructed to request additional evidence to establish that the petitioner has a qualifying relationship with its claimed U.S. subsidiary, [REDACTED].

IV. CONCLUSION

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



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

ORDER: The director's decision dated October 3, 2014 is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing discussion and entry of a new decision which, if unfavorable to the petitioner, shall be certified to the Administrative Appeals Office for review.