



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 04 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)

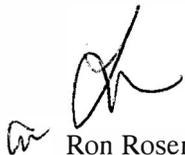
ON BEHALF OF PETITIONER:



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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this 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 California corporation established in [REDACTED], states that it operates an import, export, and trading business. It claims to have a qualifying relationship with [REDACTED] located in China. The petitioner seeks to employ the beneficiary as president of its new office in the United States.

The director denied the petition, concluding that the petitioner failed to establish: 1) that it has a qualifying relationship with the beneficiary's foreign employer; and 2) that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the preponderance of the evidence establishes that it is a qualifying affiliate or subsidiary of the beneficiary's foreign employer, and that it will support a qualifying managerial or executive position within one year of commencing operations. 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 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(1)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

II. Ability to Support a Managerial/Executive Position within One Year

The first issue to be addressed is whether the petitioner established that the new office would support the beneficiary in a qualifying managerial or executive position within one year of approval of the petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

A. Facts

The petitioner seeks to employ the beneficiary of its new office, which was established to market and sell the foreign entity's metal and plastic products and to purchase parts and accessories for export to China.

In a letter dated April 16, 2014, the petitioner stated that the beneficiary will: "direct the sales and technical team of the American Company and act as its president"; "be responsible for managing the American Company, recruiting department managers... and assigning them to their proper jobs and duties"; "represent the company at trade association meetings to see more business opportunities for both the China [sic] company and the American Company"; and "gradually supervise approximately three to five managers of the company who in turn will be directly managing their respective divisions." The petitioner indicated that the beneficiary will have the authority to hire and fire employees "as necessary."

The petitioner submitted a proposed organization chart for the U.S. entity. The board of directors is at the apex of the U.S. organization chart. The beneficiary, as President, is subordinate to the board of directors. The chart indicates that within six months of the beneficiary's admission into the United States, the petitioner intends to hire three managers subordinate to the beneficiary. The managerial positions are identified as: Administration and Accounting Department Manager; Sales and Marketing Department Manager; and Purchasing Department Manager. The chart indicates that "when or after the managers are in their positions," each department will hire two additional employees subordinate to the manager.

The director issued a Request for Evidence ("RFE") informing the petitioner that its initial evidence was insufficient to establish that the new office will support an executive or managerial position within one year of the petition's approval. The director instructed the petitioner to submit additional information regarding the proposed nature of the new office describing the scope of the entity, its organizational structure, and its financial goals; the size of the U.S. investment and financial ability of the foreign entity to remunerate the beneficiary and commence doing business in the United States; and the organizational structure of the foreign entity. Specifically, the director suggested that the petitioner submit, among other evidence, the following: a copy of the business plan; a copy of any feasibility studies, market research studies, or similar establishing that the U.S. company would support a manager or executive within one year; a letter indicating the amount of the U.S. investment and evidence of the ability to pay the beneficiary and commence doing business in the United States; a capitalization table; documents showing payment for services to start the U.S. business; a more detailed organization chart including a summary of proposed duties and expected education level of all positions; the foreign entity's balance sheets and statements of income and expenses showing its financial position; the U.S. entity's business bank statements; current letters from the petitioner's bank indicating when its accounts were open, current status, and average balances; and the petitioner's most recent tax return.

The RFE also informed the petitioner that "all foreign language documents must have a complete English translation to establish eligibility." Specifically, the RFE advised the petitioner that "in order for USCIS to consider this evidence, [the petitioner] must submit English language translations for each document" and that "the translator must certify that: the translations are accurate and complete; and he or she is competent to translate from the foreign language into English."

In response to the RFE, the petitioner submitted an undated letter. The letter stated that the beneficiary will be responsible for directing and coordinating the petitioner's day-to-day operations. The letter described the beneficiary's proposed duties as: "direct the development and implementation of the company's marketing and business development plans and policies"; "oversee the development and coordination of the sales offices in domestic China and the U.S. subsidiary in [redacted] California including the establishment of the short and long-range marketing and sales activities"; "direct and review the performances of technical assessments on PVC decorative and ecological wood plastic foaming for exports to [the petitioner] in CA, U.S.A."; "determine the availability and cost of other products"; "negotiate and execute the import and export contracts on behalf of Haili"; "oversee the company's products purchasing process from beginning to end"; "act as the chief liaison between the parent company and the U.S. entity in connection with the purchase and sales business."; "submit progress report to the president and the board of directors of the foreign entity"; and "exercise authority over personnel administration including compensation and hiring/firing of employees."

The petitioner resubmitted the previously provided U.S. organization chart. The petitioner indicated that once the beneficiary is settled in the United States, he will hire his administrative assistant and several experienced purchase, sales, and marketing personnel.

In response to the director's request for a business plan to show and explain the company's profile and goals, the petitioner stated: "In our application we have already provided a copy of our foreign company's brochure. In the brochure it states that company's profile and goals. It also provides the market analysis and what business we do as well as our lists of customers." The petitioner added that "[i]n the early stage we like to

test the USA market to see whether we can sell our products here. We will hire some sales and purchase persons in the States to assist us to sell our products and also purchase some new products for us to market in China."

In response to the director's inquiry regarding the size of the U.S. investment, the petitioner indicated that the \$96,764 in funds transferred from China "is sufficient to get [the petitioner] started" and stated that the foreign company "is ready to inject more money as required." The petitioner stated that the foreign entity had \$4.47 million in sales in 2013.

The director denied the petition finding the evidence insufficient to establish that the new U.S. business will be able to support the beneficiary in an executive or managerial position one year from the approval of the petition. The director stated that the bank statements failed to demonstrate that the company had sufficient funds to cover operating expenses and remunerate the new office's employees after deducting the beneficiary's salary. The director also stated that the petitioner failed to provide evidence of additional assets from the foreign entity to be invested in the new office. The director found that the explanation of the proposed business lacked sufficient detail.

On appeal, the petitioner asserts that it has provided sufficient evidence of the amount of investment, intended personnel structure, products and services to be provided, physical premises, and viability of the parent company to establish that the beneficiary will be employed in a managerial or executive capacity within one year of the petition's approval.

Specifically, the petitioner asserts that \$96,746 is sufficient to remunerate the new office's employees and cover operating expenses. Additionally, that petitioner claims that the director considered only one of the foreign entity's several bank accounts and failed to consider the foreign entity's profit statements. The petitioner asserts that the evidence demonstrates that the foreign entity is a successful business in China with 50 full-time employees and an undistributed profit of over \$1,117,544 and has sufficient funds to support the U.S. operation. The petitioner resubmits balance sheets, profit statements, and bank statements for the foreign entity.

The petitioner also states that it plans to hire three employees six months after the beneficiary's admission into the United States and six more employees "when or after the managers are in their positions." The petitioner claims that the first three employees hired will be an administrative assistant; a sales and marketing manager with a degree in marketing; and a purchasing manager with a degree in business.

B. Analysis

Upon review, the petitioner has failed to establish that the beneficiary would be employed in a managerial or executive capacity, as defined at sections 101(a)(44)(A) and (B) of the Act, within one year of the approval of the petition.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of

managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.* The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary will perform the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary will primarily perform these specified responsibilities and does not spend a majority of his or her time on day-to-day operational functions at the end of the first year of operations. *See Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The petitioner describes the beneficiary's potentially qualifying managerial or executive duties in broad language that fails to explain the beneficiary's proposed activities on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include: direct the sales and technical team; managing the American company; direct the development and implementation of the company's marketing and business development plans; oversee the development and coordination of the sales offices; and exercise authority over personnel administration. The broadly described duties provide little insight into the beneficiary's anticipated daily activities and potentially include both qualifying and non-qualifying sales and marketing duties. Without further detail, it cannot be determined what percentage of the time the beneficiary will spend on qualifying versus non-qualifying duties. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.*

The position description suggests that the beneficiary's duties include operational sales, marketing, and purchasing duties. The petitioner states that the beneficiary will negotiate and execute the import and export contracts on behalf of the petitioner; determine the availability and cost of other products; oversee the company's product purchasing process from beginning to end; represent the company at trade association meetings; and review the performances of technical assessments on PVC decorative and ecological wood plastic foaming for export. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir. 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)). The petitioner has not provided evidence to demonstrate that the beneficiary will be able to focus on primarily qualifying duties rather than the provision of routine sales, purchasing, and marketing services.

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that her/his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary will spend on them. For this reason, we cannot determine whether the beneficiary will be primarily performing the duties of a manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Overall, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period. See generally, 8 C.F.R. § 214.2(l)(3)(v)(C).

Here, the petitioner has failed to provide its business plan, financial projections, market studies, or other evidence to explain how it will expand to the point where it can support a manager or executive within one year. In response to the RFE requesting such information, the petitioner stated that the foreign company's brochure explains the company's profile and goals and provides a market analysis, explanation of the foreign entity's business, and a list of customers. However, the petitioner failed to submit a certified English translation of the document, which is written entirely in Chinese. Because the petitioner failed to submit a certified translation of the document, it cannot be considered as evidence. See 8 C.F.R. § 103.2(b)(3).

Although the petitioner submitted an organizational chart indicating that the petitioner intends to hire three subordinate "managers" and six additional staff during the first year of operations, the record contains no corroborating evidence to establish that the company's hiring plan is feasible in light of the company's projected income and expenses for the first year of operations. Further, while the petitioner has established that it has received initial funding of approximately \$97,000, it has not offered any support for its statements that this amount is sufficient for the company's start-up. The petitioner does not have to establish that it has the funds in place at the time of filing to pay all employees who will be hired during the first year of operations, as suggested by the director. However, absent information regarding the petitioner's projected income and a detailed hiring plan, the petitioner's assertions that it will employ a subordinate tier of managers and ten total employees within one year are not sufficient. 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)).

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or

managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Here, the petitioner does not indicate that the beneficiary will manage an essential function, but does state that the beneficiary will supervise three "managers" within six months of his admission to the United States. However, the evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. In order to be a supervisor, an employee must be shown to possess some significant degree of control or authority over the employment of a subordinate. See generally *Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (Cited in *Hayes v. Leroy Thomas, Inc.*, 2007 WL 128287 at *16 (E.D. Tex. Jan. 11, 2007)). The beneficiary's position description fails to demonstrate that the beneficiary will primarily be focused on supervising or controlling the work of subordinate managers. In addition, no position descriptions have been provided for the beneficiary's anticipated subordinate managers or their subordinate employees. Without additional information regarding the division of duties among the beneficiary's subordinates; the petitioner has failed to demonstrate that the proposed subordinate "manager" positions will supervise and control the work of subordinate employees within one year of the approval of the petition.

An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act. In evaluating whether the beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. The petitioner failed to provide position descriptions for the beneficiary's subordinates or otherwise demonstrate that a bachelor's degree is required for any of the positions subordinate to the beneficiary. Therefore, the petitioner has not established that the beneficiary would supervise professionals.

In addition, the petitioner has not been consistent in describing its proposed organizational structure for the initial year of operations. While the petitioner submitted an organizational chart indicating that it would have three managers after six months, the beneficiary's position description indicates that he will "gradually supervise approximately three to five managers." The petitioner claimed in response to the RFE, that it intends to hire an administrative assistant and several sales, marketing, and purchasing personnel after the beneficiary "gets himself settled in." The vague hiring plans provided are insufficient to establish the company's intention to hire sufficient employees within one year of the approval of the petition to elevate the beneficiary higher than a first-line supervisor. Again, the petitioner has not provided a business plan, financial projections, or specific hiring plans to demonstrate how it intends to grow to a level to support a primarily managerial or executive capacity.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

As discussed, the petitioner failed to provide evidence of its projected first-year growth in support of its claim that the company will support an executive position within one year. Without the petitioner's business plan or other evidence of its financial projections, specific hiring plans, and a clear description of its anticipated organizational structure at the end of the first year of operations, we cannot determine whether the beneficiary would be relieved from performing primarily non-qualifying duties associated with the company's marketing, purchasing, sales and trade functions. The petitioner listed the beneficiary's duties as including both qualifying and operational tasks, but has not established when or if he would be relieved from performing primarily non-qualifying duties within the one-year timeframe established by the new office regulations.

For the foregoing reasons, the petitioner has not established that the beneficiary will be employed in a managerial or executive capacity within one year of the approval of the petition. Accordingly, the appeal will be dismissed.

III. Qualifying Relationship

The second issue addressed by the director is whether the petitioner established it has a qualifying relationship with the beneficiary's foreign employer, [REDACTED]

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 (1)(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.

* * *

(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.

A. Facts

The petitioner stated that it is a wholly owned subsidiary of [REDACTED]. The petitioner stated that it issued 5,000 of its 100,000 authorized shares to the foreign entity at \$10.00 per share. The petitioner explained that the foreign entity instructed Mr. [REDACTED] manager of the foreign entity's production department, and Ms. [REDACTED] manager of the foreign entity's finance department, to wire the petitioner a sum of \$100,000 on behalf of the foreign entity. The petitioner explained that the funds represent the foreign company's "initial capitalization and operating expenses for the American Company."

The petitioner provided a stock certificate numbered "00." The certificate indicates that the petitioner issued 5,000 shares of its stock to the foreign entity on November 2, 2013. An accompanying stock ledger indicates that the shares are original issue and that the foreign entity paid \$50,000 for the shares. The ledger does not include any additional shareholders. In addition, the petitioner submitted the minutes from its organizational meeting which indicate that it sold 5,000 shares to the foreign entity in exchange for \$50,000.

The petitioner also submitted two documents titled "Application for Funds Transferred Overseas" and its March 2014 bank statement from [REDACTED]. The documents indicate that [REDACTED] wire transferred \$48,360 and \$48,430, respectively, to the petitioner's [REDACTED] account on March 25, 2014. The evidence shows that the transferred funds were withdrawn from two different [REDACTED] accounts.

In the RFE, the director informed the petitioner that the initial evidence was insufficient to establish a qualifying relationship with the foreign entity. The director stated that the evidence failed to demonstrate why the foreign entity was unable to wire funds to the petitioner, or to establish that [REDACTED] wired funds to the petitioner on the foreign entity's behalf. The director suggested that the petitioner provide the following additional evidence: proof of stock purchase or capital contribution in exchange for ownership; a properly executed term sheet, letter of intent, memorandum of understanding, or other similar document outlining the details of any investment in the petitioning entity; and a copy of the petitioner's most recent federal tax returns demonstrating a qualifying relationship with the foreign entity.

In response to the RFE, the petitioner explained that, due to China's foreign currency control rules, it is a more complicated and "tedious process" for a company to transfer U.S. dollars from China than it is for an individual. The petitioner stated that Chinese law limits the amount a company can transfer each day and that each transaction requires a written report submitted to the bank and the company's seal. The petitioner indicated that the foreign entity instructed Mr. [REDACTED] and Ms. [REDACTED] to transfer the money to the U.S. account on behalf of the foreign entity because it is easier to transfer the funds from personal accounts rather than the company account. The petitioner also resubmitted the evidence provided at the time of filing.

The director denied the petition concluding that the petitioner failed to establish a qualifying relationship with the foreign entity. The director found the evidence is insufficient to establish that the foreign entity is the originator of the funds transferred from [REDACTED]. Further, the director noted that the petitioner failed to provide evidence to support its assertions that the funds could not be transferred directly from the foreign entity due to Chinese law.

On appeal, the petitioner asserts that the stock certificate and ledger, organizational minutes, and foreign entity's board resolution are sufficient evidence to establish that the foreign entity owns 100% of the U.S. entity. The petitioner asserts that the origin of the funds is immaterial because "under the company law, it is well-settled that the name that appears on the stock certificate and stock ledger is conclusive evidence as to the ownership of the share" and that whether consideration was paid for the shares "only goes to the potential liability of the share holder or director."

Alternatively, the petitioner asserts that it has a qualifying affiliate relationship with the foreign entity. The petitioner asserts that [REDACTED] is a common shareholder, and that [REDACTED] serve on the board of

directors for both entities. The petitioner concludes that the qualifying subsidiary/affiliate relationship has been established by the preponderance of the evidence under the totality of circumstances.

On appeal, the petitioner submits a translated abstract of the foreign entity's by-laws. The abstract indicates that the foreign entity has \$1,650,000 registered/actual capital. The document also identifies the shareholders' capital contributions as: [REDACTED] \$148,500 and [REDACTED] \$16,500.¹

B. Analysis

Upon review, the petitioner has failed to establish that it has a qualifying relationship with the foreign entity, as required by 8 C.F.R. § 214.2(l)(3)(i).

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 (Comm'r 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.

The petitioner claims that "under company law, it is well-settled that the name that appears on the stock certificate and stock ledger is a [*sic*] conclusive evidence as to the ownership of the share." However, as general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The petitioner's articles of incorporation state that "stock authorized under this plan shall be issued only in exchange for money, or property susceptible to monetary valuation other than capital stock, securities or services rendered or to be rendered." Despite the petitioner's assertions, the consideration paid for the shares is material to whether the petitioner issued the claimed shares to the foreign entity.

¹ Upon review of the original Chinese document, it appears there is an error in the translation. The Chinese document provides the amounts of registered capital, actual capital, and shareholder capital in "ten thousand yuan." Whereas the registered and actual capital amounts are translated correctly; it appears that that [REDACTED] capital contribution translates to \$1,485,000 and [REDACTED] capital contribution translates to \$165,000.

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) specifically allows the director to request such other evidence as the director may deem necessary. As ownership is a critical element of this visa classification, USCIS may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. Evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Regarding the start-up activities of a corporation, such evidence would include documentation to establish that the claimed parent company actually formed the subsidiary and funded the start-up expenditures. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

The petitioner provided a Sale of Shares document from its organizational minutes indicating that it resolved to sell shares to the foreign entity for \$50,000 consideration and a Resolution of Investment indicates that the board approved the sum of \$100,000 for the development of the subsidiary company. The Resolution of Investment does not provide an ownership interest in consideration for the \$100,000 investment. Neither document provides the specific terms of financing or indicates what money would be used. Therefore, there is no indication that the funds transferred into the petitioner's account were consideration for the acquisition of an ownership interest rather than an investment.

Additionally, as discussed by the director, the petitioner has failed to establish that the funds transferred to the U.S. account originated with the foreign entity. Although the petitioner claims that [REDACTED] transferred money on behalf of the foreign entity, the petitioner has not provided documentary evidence to support its claims. The petitioner has not provided documentation to demonstrate the agreement between the foreign entity and the individuals who transferred the funds. The petitioner has also not provided account information, wire transfer receipts, or any other bank documentation to show a transfer of funds to Mr. [REDACTED] and Ms. [REDACTED] personal accounts from the foreign entity as evidence of the source of the funds. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). While the petitioner has provided "abstracts" of the foreign entity's bank statements; there is no information within these documents to indicate that the foreign entity transferred funds to Wei Lui or Ping Jin to compensate them for the funds transferred to the petitioner's U.S. bank account.

Furthermore, the petitioner has not provided evidence that the foreign company was unable to transfer funds due to Chinese foreign currency law. 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).

For the above reasons, the petitioner has failed to establish the foreign entity, and not individual shareholders, own the U.S. organization. Therefore, the evidence is insufficient to show that the U.S. entity qualifies as a subsidiary of the foreign entity.

The evidence on record is also insufficient to establish a qualifying relationship between the two entities as affiliates. The foreign entity's by-laws indicate that [REDACTED] owns 10% and [REDACTED] owns 90% of the foreign entity. Even if the petitioner had established that [REDACTED] each possessed a 50%

ownership interest in the petitioner; the two entities are owned by different groups of individuals in varying proportions and do not share sufficient common ownership by one individual. An affiliate relationship requires ownership and control by the same group of individuals with each individual owning and controlling approximately the same share or proportion of each entity, or majority ownership of both companies by the same individual. See 8 C.F.R. § 214.2(l)(1)(ii)(L) .

Based on the evidence submitted, the petitioner has not established that it has a qualifying relationship with the foreign employer. For this additional reason, the appeal will be dismissed.

IV. 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, 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 this burden.

ORDER: The appeal is dismissed.