



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

(b)(6)

DATE: **MAY 12 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:

[REDACTED]

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 The director's decision will be withdrawn and the matter will be remanded to the director for further action and entry of a new decision.

The petitioner filed this nonimmigrant petition seeking to employ 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 Florida corporation established in [REDACTED], states that it operates as a retailer and wholesaler of miscellaneous consumer goods. The petitioner claims to be a subsidiary of [REDACTED] located in India. The petitioner seeks to employ the beneficiary as its president/CEO for a period of one year.

The director denied the petition on four alternate grounds, concluding that the petitioner failed to establish: (1) that it has a qualifying relationship with a foreign entity; (2) that the beneficiary has been employed by a qualifying foreign entity for at least one year within the three years preceding the filing of the petition; (3) that the beneficiary was employed in a qualifying managerial or executive capacity at the foreign entity; and, (4) the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and support the start-up operations during the U.S. entity's first year of operations.

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 it has a qualifying relationship with the foreign entity, that the beneficiary was employed by the foreign entity in an executive capacity for one year, and that it has taken all the initial steps required to qualify for the benefit sought as a new office. 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.

## 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).

#### 1. Facts

The petitioner filed the Form I-129 on March 22, 2013. On the L Classification Supplement to Form I-129, the petitioner identified the beneficiary's last foreign employer as [REDACTED]. The petitioner indicated that the foreign and U.S. companies have a parent/subsidiary relationship and simply stated [REDACTED] " where are asked to describe the stock ownership and control of each company.

In support of the petition, the petitioner submitted its Articles of Incorporation, dated [REDACTED] indicating that it is authorized to issue 1,000 shares of stock.

The director issued a request for evidence ("RFE") on May 14, 2013, advising the petitioner that the evidence submitted was insufficient to establish the ownership and control of the U.S. company. The director instructed the petitioner to submit evidence of its qualifying relationship with the foreign entity.

In response to the RFE, the petitioner submitted a letter from the foreign entity, dated August 6, 2013, indicating that it was written by [REDACTED] however, the letter is not signed. The letter states that the foreign entity "is 100% stockholder of [the petitioner]." In support of this claim the petitioner submitted a stock certificate and stock ledger. The stock certificate, numbered "COM101," indicates that it issued 1,000 shares of the petitioner's stock, without par value, to [REDACTED] on April 28, 2013. The stock ledger indicates that the petitioner issued the foreign entity 1,000 shares of stock on April 28, 2013 and on stock certificate "COM1001."

The petitioner provided an Asset Purchase Agreement indicating that it purchased [REDACTED] business for \$350,000 on March 1, 2013. The petitioner also submitted a lease agreement with [REDACTED], commencing on March 1, 2013.

The director denied the petition on January 17, 2014 concluding that the petitioner failed to establish that the beneficiary's foreign employer and the U.S. company are qualifying organizations. In denying the petition, the director found that the petitioner did not establish that it is controlled by the foreign entity. The director

noted that the petitioner submitted a stock certificate and stock ledger showing that the foreign entity owns its issued stock, but its lease agreement with [REDACTED] indicated that actual control of the petitioner is likely shared between the petitioner and [REDACTED], given the provisions specifically stipulated therein.

On appeal, the petitioner states that the director acknowledged that the foreign entity wholly owns the petitioner and as such controls the petitioner. The petitioner stated that the lease agreement does not grant any control over its business operations to [REDACTED]

## 2. Analysis

Upon review, the petitioner has not established that it has a qualifying affiliate relationship with the foreign entity.

As a preliminary matter, we must first address the director's statements and conclusions regarding the terms of the petitioner's lease agreement with [REDACTED]. The director determined that control of the petitioning company appears to be shared with [REDACTED] due to certain provisions found in the lease agreement, specifically, those referring to hours of operation, employee uniforms, maintenance of clean premises, availability of bookkeeping records, and motor fuel ownership and pricing. However, we note that the agreement indicates that [REDACTED] retains ownership and control of the fuel pumps and actual premises, while the petitioner operates the fuel pumps and convenience store on a day-to-day basis. Here, the director's analysis focused on the petitioner's operation of a leased premise, primarily of the existing fuel pumps and convenience store, where the provisions stipulated are typical when the lessor owns the property at said location.

The director incorrectly focused on the terms of the lease agreement and provided inadequate support for a conclusion that [REDACTED] controls the petitioning U.S. company. In any lease agreement regarding existing fuel pump operations, where ownership is retained by the lessor, it is reasonable to expect that certain terms and conditions are listed as requirements for each party. Although the issue of qualifying relationship will be remanded to the director for further review and additional evidence, the director's analysis and comments regarding the petitioner's lease agreement are withdrawn.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

Although the petitioner submitted a stock certificate and stock ledger indicating that the foreign entity owns all of its shares, it failed to submit any evidence that the foreign entity paid for said shares. 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. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

At this time, we cannot determine whether the claimed parent company has actually purchased the 1,000 shares of stock of the petitioning U.S. company, as stated on the share certificate. Thus, the petitioner's claim that the foreign entity has a parent/subsidiary relationship with the petitioning U.S. company has not been established.

As the director improperly focused on the terms of the petitioner's lease agreement in analyzing the petitioner's qualifying relationship with the foreign entity, the matter will be remanded. The director should instruct the petitioner to submit evidence of the stock purchase or any other corroborating evidence of the foreign entity's ownership and control over the petitioning U.S. company.

#### B. Employment Abroad for One Year

The second issue addressed by the director is whether the petitioner established that the beneficiary was employed full time by a qualifying foreign entity for one continuous year within the three year period preceding the filing of the petition, pursuant to 8 C.F.R. § 214.2(l)(3)(iii).

##### 1. Facts

On the Form I-129, the petitioner stated that the beneficiary's "date of last arrival" to the United States was July 27, 2008 and his current nonimmigrant status is "visitor," valid until March 22, 2013. On the L Classification Supplement to Form I-129, the petitioner stated that the beneficiary was employed by the foreign entity from January 1, 2004 to May 27, 2011. Where asked to explain any interruptions in the beneficiary's employment, the petitioner stated "currently on assignment in the USA." Finally, the petitioner did not respond where asked to list the beneficiary's previous stays in the United States in an H or L status. In its initial letter of support, the petitioner again stated that the beneficiary has worked as the general manager and CEO of the foreign entity since its inception in 2004.

The petitioner submitted a Deed of Partnership indicating that the foreign entity was established in Pakistan on January 5, 2005. The petitioner also submitted a letter from [redacted] Chartered Accountant, dated January 9, 2009, who stated the following regarding the beneficiary's employment with the foreign entity:

This is to certify that [the beneficiary] is running Electronic & Electrical Item shops on the Firm Name M/s [redacted] since last 10 years. He is running the shop in an excellent manner and this shop is one of most famous and reputed shop [sic] for electrical and electronic items.

In the RFE, the director advised the petitioner that the evidence submitted is insufficient to demonstrate that the beneficiary has been employed by the foreign entity since 2004. The director instructed the petitioner to

submit evidence that the beneficiary was employed full time by a qualifying foreign entity for one continuous year within the three-year period preceding the filing of the petition

In response to the RFE, the petitioner submitted the exact same letter detailed above from [REDACTED] Chartered Accountant, with a new date of January 9, 2013. The petitioner also submitted a new letter from [REDACTED] Chartered Accountant, dated July 7, 2013, and stating the following regarding the beneficiary's employment at the foreign entity:

This is to certify that [the beneficiary] has worked with M/s [REDACTED] as the manager for the period from January 1, 2002 to June 30, 2008.

The petitioner submitted copies of hand written "salary receipts" from the foreign entity to the beneficiary for January to December of 2012, all issued in January 2012, and for January to June of 2013, all issued in January 2013.

The director denied the petition concluding, in part, that the petitioner failed to establish that the beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization. In denying the petition, the director noted that the petitioner must establish that the beneficiary's one year of full-time employment with the foreign entity occurred between March 23, 2010 and March 22, 2013. The director found that the beneficiary has been in the United States continuously since July 27, 2008. Accordingly, the director concluded that the beneficiary was not employed by the foreign entity during the required period.

On appeal, the petitioner contends that the statute at section 101(a)(15)(L) requires that the beneficiary be employed for one continuous year within the three years preceding his application for admission to the United States. The petitioner states that the beneficiary initially sought admission to the United States on July 27, 2008 and clearly meets the one-year requirement prior to that date. The petitioner further contends that the beneficiary was previously granted L1A status from April 27, 2011 to April 26, 2012 to work for a U.S. subsidiary of the petitioner's foreign parent, and that this one-year period may be counted towards his employment with a qualifying organization.

## 2. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary has one year of continuous employment with a qualifying organization abroad. However, it appears that a strict application of the regulation at 8 C.F.R. § 214.2(l)(3)(iii), requiring the petitioner to establish one year of employment in the three years preceding the filing of the petition, was not warranted in this case. Accordingly the matter will be remanded to the director in order to allow the petitioner an opportunity to supplement the record.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) states:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in

a capacity that is managerial, executive, or involves specialized knowledge. *Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.*

Emphasis added.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) must be read together with the regulation at 8 C.F.R. § 214.2(l)(3)(iii), which requires evidence that the beneficiary 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*. If the beneficiary has spent time in the United States in a lawful status for a branch of the same employer, or a parent, affiliate or subsidiary thereof, this period of employment will not be considered interruptive of the beneficiary's continuous employment abroad, and USCIS will look beyond the three-year period immediately preceding the filing of the petition to determine whether the beneficiary meets the requirement set forth at 8 C.F.R. § 214.2(l)(3)(iii). A beneficiary's one year of continuous employment abroad, once established, remains continuous, despite the beneficiary's subsequent stay in the United States for a branch, affiliate, subsidiary, or parent of the foreign entity in an authorized nonimmigrant status.

Here, although the petitioner did not indicate any prior periods of stay in the United States in L status on the Form I-129, USCIS records reflect that the beneficiary has been granted L-1A status on two previous occasions since his initial admission as a B-2 nonimmigrant in July 2008. The beneficiary was granted L-1A status from February 11, 2009 to January 24, 2010 based on a petition filed by [REDACTED]. The beneficiary was also granted L-1A status from April 27, 2011 to April 26, 2012 based on a petition filed by [REDACTED]. If the petitioner establishes that it has a qualifying relationship with these prior L-1 employers, it may be able to establish that these periods of time would not be deemed interruptive. As the director strictly applied the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) without taking into account the beneficiary's prior stays in L-1A classification, this issue will be remanded to the director for further review and development of the record.

However, we note that the petitioner submitted contradictory statements regarding the beneficiary's dates of employment at the foreign entity. The petitioner continuously states that the beneficiary has been employed by the foreign entity since 2004, specifically January 1, 2004 on the Form I-129 Supplement; however, the Deed of Partnership indicates that the foreign entity was established in January 2005. The petitioner also states on the Form I-129 Supplement that the beneficiary ended his employment at the foreign entity on May 27, 2011; however, a letter from [REDACTED] Chartered Accountant, dated January 9, 2009, states that the beneficiary had been employed at the foreign entity for the previous 10 years, which would have been January 1999. A second letter from [REDACTED] Chartered Accountant, dated January 9, 2013, states that the beneficiary had been employed at the foreign entity for the previous 10 years, which would have been January 2003. A third letter from [REDACTED] Chartered Accountant, dated July 7, 2013, states that the beneficiary had been employed at the foreign entity from January 1, 2002 to June 30, 2008. Therefore, the record is not clear as to the beneficiary's actual dates of employment at the foreign entity to establish that the beneficiary meets the "one continuous year of full-time employment abroad" requirement.

The director should instruct the petitioner to explain and clarify the beneficiary's exact dates of employment at the foreign entity, and provide evidence of wages paid to the beneficiary for one full year of employment

within the three years preceding his admission to the United States in July 2008. The petitioner should also be asked to provide evidence that the two previous L-1A employers are related entities that share common ownership and control with the petitioner and the beneficiary's foreign employer as branches, affiliates or subsidiaries.

### C. New Office

The third ground for denial was based on the director's determination that the petitioner should be treated as a new office. Based on this determination, the director applied the regulatory requirements at 8 C.F.R. § 214.2(l)(3)(v)(C), and found that the petitioner had not established the size of the U.S. investment and the foreign entity's financial ability to remunerate the beneficiary's and support the petitioner's start-up operations during the first year of operations.

The term "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. 8 C.F.R § 214.2(l)(1)(ii)(F).

On the Form I-129, the petitioner stated it engages in the retail and wholesale of miscellaneous consumer goods and indicated that the beneficiary will be employed as its president/CEO. On the L Classification Supplement to Form I-129, where asked if the beneficiary was coming to the United States to open a new office, the petitioner checked the box indicating "no", despite providing evidence that it was incorporated in the State of Florida in [REDACTED] the same month the petition was filed.

Based on the petitioner's date of establishment, the director advised the petitioner in the RFE that it would be treated as a new office and adjudicated the petition according to the evidentiary requirements for new offices at 8 C.F.R. § 214.2(l)(3)(v).

However, the petitioner claims on appeal that the beneficiary's prior L-1A employer, [REDACTED], is also a subsidiary of the beneficiary's foreign employer. In April 2012, this employer filed a request to extend the beneficiary's L-1A status that was ultimately denied on January 25, 2013 [REDACTED]. The petitioner was established on [REDACTED] and this petition was filed on March 22, 2013. While this petition and appeal were pending, [REDACTED] has twice filed a Form I-140, Immigrant Petition for Alien Worker, on behalf of the beneficiary, one of which was denied and one of which remains pending.

Overall, the evidence of record, considered in light of USCIS records of petition filings on behalf of the beneficiary, indicate that, when this petition was filed, the petitioner has an affiliate which had been doing business in the United States for more than one year, and which continues to do business. As such, the petitioner does not meet the regulatory definition of a "new office" and it correctly marked "no" where asked on the Form I-129 if the beneficiary is coming to the United States to open a new office.

As discussed above, three different employers have filed L-1A petitions on behalf of the beneficiary since his last admission to the United States in 2008, and it is likely that the other two petitioners also claimed to be subsidiaries or affiliates of the beneficiary's foreign employer.

The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow a beneficiary a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business.

The regulations allow for a one-year period for a U.S. petitioner to commence doing business and develop to the point that it will support a managerial or executive position. By allowing multiple petitions under the more lenient standard to the same organization, USCIS would in effect allow foreign entities to create underfunded, under-staffed or even inactive companies in the United States, with the expectation that they could receive multiple one-year approvals without the beneficiary engaging in managerial or executive duties. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii). As previously noted, the prior petitioner's extension petition was denied. The petitioner cannot circumvent the requirements by simply incorporating a new entity to operate the same business.

Based on the foregoing, we will withdraw the director's finding that the petitioner did not satisfy the new office requirements at 8 C.F.R. § 214.2(l)(3)(v)(C). The petitioner does not qualify as a new office and instead must show that it was able to support the beneficiary in a qualifying managerial or executive capacity as of the date of filing. The matter is therefore remanded to the director for further review and additional evidence of eligibility.

#### D. Employment Abroad in a Managerial or Executive Capacity

The final issue to be addressed is whether the petitioner has established that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity.

The petitioner indicated that the beneficiary has been employed primarily in an executive position, pursuant to section 101(a)(44)(B) of the Act. The petitioner first characterized the beneficiary's role at the foreign entity as general manager and CEO and briefly described his duties in its letter of support. The petitioner noted that, at the foreign entity, the beneficiary: is entrusted with the conception, planning, financing and execution of all the business activities undertaken by the company; is charged with the responsibility and granted authority to make day-to-day as well as long term and strategic decisions; is responsible for directing the management of the organization; and is responsible for establishing the goals and policies of the company. The petitioner further stated that the beneficiary supervises the projects undertaken by the company from start to finish, enjoys full authority for making decisions, and receives little or no supervision from any other person in the organization. This initial description is too broad to demonstrate his actual daily duties and mostly paraphrases the statute.

In response to the RFE, the petitioner provided a document listing percentages of time he devotes to specific clusters of duties; however, the petitioner did not specifically distinguish whether this document pertains to the beneficiary's position abroad or at some other named company in the United States. The document lists the foreign entity and a third U.S. company, [REDACTED] incorporated in Florida. Regardless, even if this document pertains to the beneficiary's position at the foreign entity, it fails to demonstrate that he has been employed in an executive or managerial capacity. Although specifically requested in the RFE, the petitioner did not submit sufficient information about the beneficiary's position abroad to demonstrate that the listed duties qualify as managerial or executive in nature.

Further, the petitioner submitted an organizational chart for the foreign entity showing that the beneficiary supervises a finance manager, a procurement manager, a marketing and sales manager, and a customer service manager. Each of the subordinate managers supervise their own office assistant and outdoor assistant. The

organizational chart specifically states that the qualifications required for the position are a bachelor's degree for management positions and associate's degree for clerical positions. However, the petitioner did not provide any position descriptions or job duties for the beneficiary's subordinates to show that the positions are professional in nature. Furthermore, the petitioner did not demonstrate that the foreign entity actually employs any of the listed subordinates or that they actually have the professional degrees listed as requirements in the organizational chart. As such, the record does not demonstrate that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

We concur with the director's determination that the evidence of record does not establish that the beneficiary was employed abroad in a qualifying capacity. However, as this matter will be remanded for the reasons stated above, the director may request additional evidence of the beneficiary's specific duties at the foreign entity, the percentage of time he allocated to specific tasks, and additional evidence relating to the organizational structure and staffing levels of the foreign entity during the relevant time period, including job descriptions and payroll evidence for the beneficiary's subordinate staff.

### III. 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 January 17, 2014 is withdrawn. The petition is remanded to the director for further action and entry of a new decision, which, if unfavorable to the petitioner, shall be certified to the AAO.