U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: OCT 04 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

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INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition to classify the beneficiary as an 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 limited liability company, is engaged in the distribution of prepaid calling cards to the Latin American market throughout the United States. It claims to be a majority-owned subsidiary of the beneficiary's foreign employer, [redacted] located in Mexico. The petitioner seeks to employ the beneficiary in the position of general manager for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary's foreign employer and the U.S. petitioner have the claimed parent-subsidiary relationship. Specifically, the director found that the petitioner did not establish that the foreign entity "has, in fact, paid for the U.S. entity." In this regard, the director suggested that the purchase price the foreign entity paid for its 51 percent interest in the U.S. company was too low in light of the petitioning company's revenues, and therefore "would not sufficiently establish a qualifying relationship exists."

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the substantial evidence of record establishes by a preponderance of the evidence that the beneficiary's foreign employer acquired a majority interest in the U.S. company in October 2010 by requiring 51 membership units from an existing member, [redacted] LP. Counsel emphasizes that the seller, [redacted] LP, set the purchase price at $1.00 per unit, and that "USCIS is not in the best position to supplant its business judgment for that of the owners of [redacted] LP] and [the foreign entity]." Counsel maintains that the petitioning company, while it achieves high gross annual revenues, also has considerable debt and expenses, from which its previous majority owner sought relief. Counsel submits a brief in support of the appeal.

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 sole issue to be addressed is whether the petitioner established that the U.S. company has a qualifying relationship with the foreign entity. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for 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.

The petitioner has consistently claimed that the beneficiary's foreign employer, [redacted], S.A. de C.V., acquired a 51 percent ownership interest in the U.S. company in October 2010. The petitioner's initial evidence included a copy of the U.S. company's Amended and Restated Operating Agreement dated October 15, 2010 which states that member [redacted] LP "has sold a 51% membership interest in the Company to [redacted] S.A. de C.V.," resulting in the following ownership structure:

[redacted] LP	41.5%
[redacted] S.A. de C.V.	51%
[redacted]	7.5%

The petitioner's IRS Form 1065, U.S. Return of Partnership Income, for 2009 confirms at Schedule B-1 that [redacted] LP previously held a 92.5% interest in the company.

In response to a request for evidence issued by the director on January 21, 2011, the petitioner submitted a copy of the membership interest purchase agreement between the foreign entity and [redacted] LP, whereby the foreign entity agreement to purchase 51 membership units from the existing member. The agreement indicates that "the aggregate purchase price for the Purchased Units is $1.00 which Purchaser shall pay to seller simultaneously with the execution and delivery of this Agreement."

In a letter accompanying the petitioner's response to the RFE, counsel explained that the foreign entity paid for its membership interest in cash. Counsel noted that the parties decided on the purchase price by evaluating the financial position of the company, which showed net liabilities of over $250,000 as of September 2010. Counsel provided a detailed explanation for the foreign entity's desire to purchase an interest in the U.S. company due to its existing calling card distribution network, and an explanation as to why the low purchase price was set. Further counsel noted, and the petitioner provided evidence, that the foreign entity has entered a conditional Contribution Agreement to provide $200,000 to the petitioning company to satisfy its creditors.

The director's decision to deny the petition was based primarily on a finding that the purchase price paid by the foreign entity for its membership interest was too low in light of the company's high revenues and that the petitioner did not provide evidence that the foreign entity has actually capitalized the United States company.

On appeal, counsel asserts that the director did not fully understand the nature of the transaction by which the petitioner acquired its ownership, and erred by supplanting its business judgment for that of the owners of [redacted] LP and the foreign entity. Counsel further emphasizes that "[t]here is no requirement in the L-1 rules that the qualifying overseas entity make additional capital contributions over and above the purchase price of the ownership interest." Counsel maintains that the evidence of record satisfies the existence of a parent-subsidiary relationship by the preponderance of the evidence standard.

Upon review, counsel's assertions are persuasive. The AAO will withdraw the director's decision and sustain the appeal.

The petitioner has consistently stated that the foreign entity acquired its 51 percent ownership interest in the U.S. company from an existing member, [redacted] LP. Therefore, the petitioner needed only to document that this transfer of ownership occurred, which it did by submitting the U.S. company's amended and re-stated operating agreement and the membership purchase interest agreement. The director's pre-occupation with both the purchase price and with the lack of funds transferred directly to the U.S. company was misplaced. The petitioner has provided a detailed and reasonable explanation with respect to the seemingly low purchase price, such that the AAO has no reason to doubt the validity of the transaction.

The director cited no other grounds for denying the petition, and upon *de novo* review, the AAO sees no additional basis for denial. Accordingly, the AAO will withdraw the director's decision and approve the petition. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met its burden of proof.

ORDER: The appeal is sustained.