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January 17, 2012

Office of Public Engagement
United States Citizenship and Immigration Services
20 Massachusetts Ave. NW
Washington, DC 20529

Via e-mail: scopsrfe@dhs.gov

**Re: AILA Comments on Draft RFE Template: I-129 L-1
Intracompany Transferees: Qualifying
Relationship/Ownership and Control/Doing Business**

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) submits the following comments on the USCIS RFE Template “I-129 L-1 Intracompany Transferees: Qualifying Relationship/Ownership and Control/Doing Business.”

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this RFE template and believe that our members’ collective expertise provides experience that makes us qualified to offer views that will benefit the public and the government.

AILA recognizes the Service’s efforts in creating RFE templates and sharing them with stakeholders for comment. This cooperative effort serves the entire stakeholder community and will hopefully provide both greater consistency in adjudication by the Service and better prepared petitions from the public. In that spirit, we commend the Service for the draft L-1 template addressing Qualifying Relationship/Ownership and Control/Doing Business. The language of the template is generally clear and precise and effectively advises the petitioner as to what evidence is being requested and why. AILA particularly appreciates the opening explanatory section and its emphasis on the fact that the suggested evidence is merely exemplary and not exhaustive or mandatory. AILA suggests that the following

additional language, at the end of the introductory section, will add further clarity to the eligibility requirements:

You must demonstrate this eligibility by the preponderance of the evidence, that is, the evidence must demonstrate that it is more likely than not that the eligibility requirements are met.

Request for Translations

We request a change to the “Request for Translations” section given the fact that many corporate documents are voluminous, replete with boilerplate language, and only small portions are generally relevant to the immigration benefit requested. We suggest that the template state that so long as the complete foreign language document is submitted, it is acceptable to translate only those portions of the document that are being relied upon by the petitioner to prove eligibility. For example, a 40-page contract establishing a joint venture may have multiple pages related to choice of law clauses, provisions for breach and remedies, and confidentiality clauses that extend for pages. These provisions, in most cases, do not bear upon whether the requisite qualifying relationship exists, who has control of the entity, or whether the entity is doing business. It may also contain appendices setting forth payment schedules or intellectual property transfer conditions that also bear no relationship to what the petitioner is required to prove under the terms of the template. Allowing for partial translations decreases the burden on both the petitioner and the examiner and more closely focuses the evidence on the facts to be proven.

Ownership and Control

While the section related to establishing ownership and control (for both the U.S. and foreign entity) properly explains to a lay person what ownership and control mean, AILA suggests adding the language:

If the articles, bylaws, or other documents creating the entity required either stock purchase or a capital contribution, please submit proof of stock purchase or capital contribution.

AILA also suggests adding an additional bullet that says:

- Evidence of any contributions of property or services in exchange for ownership interest.

Experience of AILA members has shown that certain items on the list of exemplary evidence are sometimes perceived as mandatory by adjudicators who may not be familiar with the details of every type of corporate transaction. Of the items listed in the template, one that has proven troublesome is the request for evidence that stock has been purchased or capital contributed in the form of cash or other monetary transaction. This has led to an insistence that money be exchanged, and there is a disregard for evidence of alternative means of acquiring stock or capitalizing an entity, such as the contribution of labor,

goods, or services in exchange for an ownership interest. This type of RFE, occasional NOID, or outright denial has frustrated entities which have used alternative means to distribute ownership or capitalize an entity.

AILA suggests having the template sections on evidence for “Ownership and Control of the Qualifying Foreign Entity” and “Ownership and Control of the Qualifying U.S. Entity” mirror each other. For example, we recommend adding the following bulleted items to the “**Ownership and Control of the Qualifying U.S. Entity**” section:

- A detailed list of owners, which includes the foreign entity’s owners’ names and what percentages they own.
- The partnership agreement and registration documents with the names of partners and the limits of their liabilities.

Similarly, we recommend adding the following bulleted items to the “**Ownership and Control of the Qualifying Foreign Entity**” section:

- Proof of stock purchase or capital contribution, such as the following:
 - wire transfer receipts;
 - bank statements;
 - cancelled checks; or
 - deposit receipts.
- The franchise purchase agreement and documentation as evidence of the right and authority to direct the management and operation of the foreign entity.

We also suggest adding to the “**Ownership and Control of the Qualifying Foreign Entity**” section the following:

- Evidence of any other contributions of property or services in exchange for ownership.

AILA also believes that the phrase “for the duration of the beneficiary’s stay in this classification,” which appears at the top of page 4, may confuse petitioners. While this language appears simply to be intended to advise petitioners that both the U.S. and at least one qualifying foreign entity must continue to do business for the entire period of stay requested, we are concerned that this will be interpreted as a need to provide evidence at the time of filing that this will occur in the future. We suggest changing the language in the full paragraph slightly to read:

To qualify for L-1 classification, you must be doing business in the United States and at least one other country directly or through a qualifying organization. If you are no longer doing business in the U.S. and at least one other country at any time during the beneficiary’s stay in the L-1

classification, the beneficiary will cease to be eligible for the L-1 classification.

The list of exemplary evidence does not adequately address a possible qualifying relationship involving a branch, which is defined in the regulations as an operating division of an entity. In such a case, “hard” documentation of the facts of ownership of the one corporate entity would exist, but the other qualifying entity – as a branch – would not have such documentation.

We suggest the following addition:

If one of the qualifying entities is a branch of the other entity, provide documentation demonstrating that the branch conducts business as an operating division of the other entity, such as marketing materials, website pages, an organizational chart showing reporting relationships, inter-office correspondence, or other similar documentation.

Documentation for Small or Emerging Businesses

Finally, we believe that the list of exemplary evidence is generally geared toward documents that would be generated by larger or well-established businesses. Although the opening section is clear that the items requested are merely exemplary and that other evidence may be accepted, in practice, petitioners and sometimes even adjudicators feel constrained by the examples. We suggest adding a few additional examples more commonly found in small or emerging businesses, such as letters of intent, commitment letters, vendor contracts, solicitations of business, and marketing materials.

Additionally, a certificate or affidavit by the entity’s corporate secretary or other senior officer may be a simple and helpful document to explain the qualifying corporate relationship of the petitioner and the employer abroad, as well as the related issues of ownership and control. We suggest including as acceptable evidence a certificate or affidavit from a corporate officer describing the relationship between the U.S. and the foreign entity.

We fully understand that a template by its very nature cannot and should not attempt to list every item of potentially acceptable evidence, but we believe the above suggestions will assist small or emerging businesses in better understanding the types of evidence that may be sufficient to prove they are doing business in the U.S. and abroad.

We appreciate the opportunity to comment on this RFE template look forward to a continuing dialogue with USCIS on issues concerning this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION