U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

December 29, 2017 **PM-602-0155**

Policy Memorandum

SUBJECT: L-1 Qualifying Relationships and Proxy Votes

I. Purpose

This policy memorandum (PM) clarifies the 1982 precedent decision, *Matter of Hughes*,[1] by instructing officers that proxy votes must be irrevocable from the time of filing the L-1 petition through adjudication to establish a qualifying relationship. The petitioner must file an amended petition if any changes of ownership and control of the organization occur after USCIS adjudicates the petition.

II. Scope

This PM applies to and is binding on all USCIS employees. The updated guidance is effective immediately.

III. Authorities

- Immigration and Nationality Act (INA) section 101(a)(15)(L), 8 U.S.C. 1101(a)(15)(L).
- Title 8 Code of Federal Regulations (CFR), section 214.2(l).

IV. Background

If a foreign employer would like to transfer an employee working abroad to a U.S. company as an L-1 beneficiary, a qualifying relationship must exist between the beneficiary's foreign employer and the petitioner at the time of filing. To establish a "qualifying relationship," the petitioner must show that it and the beneficiary's foreign employer are either the same employer, for example, a U.S. entity with a foreign branch office or, alternatively, related as a "parent and subsidiary" or as "affiliates."[2, 3]

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[1] *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

[2] A petitioner must also demonstrate that it is a "qualifying organization." 8 CFR 214.2(l)(1)(i). A qualifying organization is defined as "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

When determining whether a qualifying relationship exists between the foreign employer and the petitioner, ownership and control are two of the factors that must be examined. Ownership means the legal right of possession with full power and authority to control. Control means the right and authority to direct the management and operations of the business entity. [4]

Before defining the term "qualifying organization" in the regulations, the former Immigration and Naturalization Service (INS) addressed the necessary corporate relationship for intracompany transfers in precedent decisions. The INS addressed the joint venture situation in *Matter of Hughes*, which provided an extensive analysis of the meaning of affiliation for L-1 purposes.[5] The INS Commissioner found that "[i]n order to be deemed affiliates, companies should be bound to one another by substantial, but not necessarily majority, ownership of shares," but "[m]ore importantly, affiliation requires that the financial link between two entities involve control by one over the management of another." *Id*. at 292-93.[6]

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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; and (3) Otherwise meets the requirements of section 101(a)(15)(L) of the INA." 8 CFR 214.2(l)(1)(ii)(G).

[3] A parent is "a firm, corporation, or other legal entities which has subsidiaries." 8 CFR 214.2(l)(1)(ii)(I). A subsidiary is "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." 8 CFR 214.2(l)(1)(ii)(K). An 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, or (3) in the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets it accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member." 8 CFR 214.2(l)(1)(ii)(L).

[4] *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (Comm'r 1988); *see also Matter of Siemens Med. Sys., Inc*. 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes.*

[5] In *Matter of Hughes*, the petitioner owned 50 percent of a South African company. While the South African company was technically a joint venture based on share ownership, de facto control of the South African company was in the hands of the petitioner. In the decision, the Commissioner outlined two types of joint venture business enterprises - equity joint ventures and non-equity joint ventures noting that an equity joint venture "is a joining of capital or capital resources; another form is when one or more of the partners participates by contributing the use of manufacturing processes, patents, trademarks, managerial know-how, or other essential factors, but does not contribute capital." *Id*. at 290.

[6] Subsequently, USCIS further refined the definition of a qualifying joint venture: (1) An equity joint venture is created under corporate law and exists when two or more companies contribute capital to the venture. A qualifying L-1 relationship can exist between a contributing company and the resulting venture if the contributing company owns at least 50% of the venture and exercises control over the venture; or (2) A non-equity joint venture, on the other hand, is a contractual arrangement in which one or more of the contributing companies provides noncapital resources (e.g., manufacturing processes, patents, trademarks, managerial know-how, or other essential factors). A non-equity joint venture does not establish a qualifying L-1 relationship. *See* the USCIS Adjudicator's Field Manual, chapter 32.2(d).

Although *Matter of Hughes* focused on joint venture scenarios, issues of ownership and control can arise in other circumstances. Specifically, owners of entities often use proxy votes to determine control of the entity. In typical proxy voting cases, a person is authorized to vote equity owned by another.[7] Neither *Matter of Hughes* nor previous USCIS guidance have addressed whether proxy votes must be irrevocable to establish control.[8]

V. Policy

Generally, a proxy can be revoked at any time, unless it is coupled with an interest or made expressly irrevocable. Depending on the specific jurisdiction governing the entity in which a proxy has been granted, the sale of an equity holder's equity may automatically revoke any proxies previously given to vote that equity. A proxy may also be revoked when the equity holder gives a subsequent proxy covering the same equity or attends a meeting to vote the equity in person.

The fact that proxies may be revoked is an issue when establishing control of a company through proxy votes. For example, although majority ownership is not required, 8 CFR 214.2(l)(1)(ii)(L) requires that affiliates share common ownership and control to have a qualifying relationship. This means that a petitioner can show control by submitting documentation demonstrating that one or more equity holders irrevocably granted the ability to vote their equity to another equity holder, thereby effectively (and legally) giving the other equity holder "control" over the company or companies in question. Such documentation may include relevant evidence regarding the legal framework under which the proxy was granted (such as the laws of the jurisdiction in which the entity is organized and the jurisdiction in which any agreements were executed), the organizational documents of the entity, irrevocable proxy agreements, official meeting minutes detailing the irrevocable proxy, an affidavit from the proxy-granting equity holder with sufficient specificity regarding the details of the irrevocable proxy, etc. As always, the petitioner bears the burden of proof and the evidence the petitioner provides must be credible and sufficient for the adjudicator to determine eligibility.

If a petitioner cannot demonstrate the requisite common ownership and control from the time of filing through the time USCIS adjudicates the petition, it fails to establish a qualifying relationship. Further, changes of ownership and control of the organization post-adjudication may constitute a substantial change in circumstances or new material information requiring re-

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[7] *See* Black's Law Dictionary (10th ed., 2014) definition of "proxy": 1. Someone who is authorized to act as a substitute for another; esp., in corporate law, a person who is authorized to vote another's stock shares. 2. The grant of authority by which a person is so authorized. 3. The document granting this authority.

[8] In *Matter of Hughes*, proxy voting was raised in the context of control separate from majority ownership; however, control may also be obtained in other types of voting arrangements, such as through specific voting provisions in equity holder agreements, voting trusts, etc.

adjudication by USCIS to ensure compliance with the regulations. In such cases, the petitioner must file an amended L-1 petition. [9]

Therefore, to establish a qualifying relationship in situations where the petitioner has submitted documentation of control by proxy votes, the petitioner must show that the proxy votes are irrevocable from the time of filing the L-1 petition through the time of adjudication. [10] If ownership and control of the organization changes after USCIS adjudicates the petition, the petitioner must file an amended petition, as such changes may constitute a substantial change in circumstances or represent new material information.

VI. Implementation

The AFM is updated by updating chapter 32.3(d) with the following:

The AFM is amended as follows:

32.3 Individual L Petition Process

(a) General * * * *

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(b) Basic Evidentiary Requirements for an L-1 Petition. * * **

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(c) Anti "Job-Shopping" Provisions of the L-1 Visa Reform Act. * * * * *

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(d) Petitioner's Status. * * * * *

The petitioner for an intracompany transferee must be a qualifying organization which is seeking to transfer a foreign employee to the United States temporarily from one of its operations outside the United States. Either the United States employer or the foreign employer may file a petition with USCIS to classify the alien as an intracompany transferee. The petitioner must be actively engaged in providing goods and/or services in the United States and abroad, either directly or through a parent, branch, subsidiary, or affiliate, with employees in both countries, for the duration of the alien's stay. The mere presence of an agent or office of the petitioner is insufficient evidence of this requirement. In situations where the petitioner has submitted documentation of a qualifying relationship through possession of proxy votes, the petitioner must show that the proxy votes are irrevocable from the time of filing through the time of

[9] A petitioner must file an amended petition with USCIS to reflect changes in approved qualifying relationships. *See* 8 CFR 214.2(l)(7)(i)(C).
[10] Such approval is further conditioned on evidence demonstrating that the qualifying relationship will continue to exist during the approval period requested.

adjudication. Further, any approval is conditioned on evidence demonstrating that the qualifying relationship will continue to exist during the approval period requested. Any changes of ownership and control of the organization post-adjudication require the petitioner to file an amended petition, as such changes may constitute a substantial change in circumstances or represent new material information.

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VII. Use

This PM is intended solely for the training and guidance of USCIS personnel in performing their duties relative to the adjudication of applications and petitions. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

VIII. Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Policy and Strategy.