

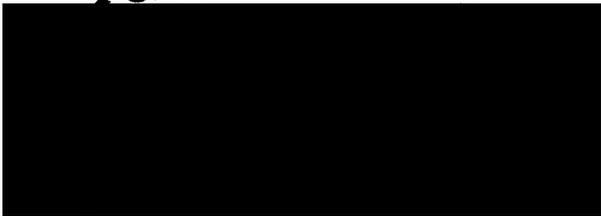


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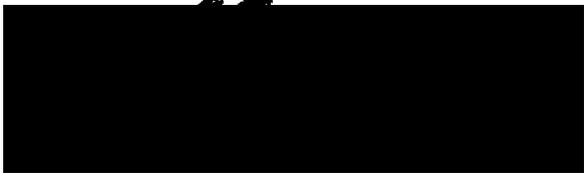


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **DEC 23 2005**  
SRC 04 125 51813

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to  
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of Florida that is engaged in the import, export and retail sale of novelty items. The petitioner seeks to employ the beneficiary as its general manager.

The director denied the petition concluding that the petitioner had not demonstrated that: (1) a qualifying relationship existed between the foreign and United States entities; or (2) the United States company had been doing business for at least one year. The director also observed that the foreign entity had not been doing business following the beneficiary's transfer to the United States.

Counsel submits Form I-290B, on which he claims that evidence submitted in response to the director's request for evidence supports the beneficiary's classification as a multinational manager or executive. In a subsequently submitted appellate brief, counsel notes the "executive" nature of the beneficiary's position in the United States company, and restates the regulatory definition of "affiliate," contending that the beneficiary's proposed position satisfies the statutory criteria of "executive capacity."

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement, which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The AAO will first address the issue of whether a qualifying relationship exists between the foreign and United States entities.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

*Affiliate* means:

(A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

(B) 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;

\* \* \*

*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 filed the instant petition on March 30, 2004. In an appended letter, dated March 24, 2004, the petitioner identified a parent-subsidiary relationship between the United States and foreign entities. As evidence of the qualifying relationship, the petitioner submitted a stock certificate, numbered 11, on which the foreign company was named as owner of 100 shares of the petitioner's issued stock. The petitioner's accompanying articles of incorporation noted that the petitioner was authorized to issue 100 shares of stock. The petitioner also submitted the foreign company's 2002 financial statements and accompanying notes, which identified three individual shareholders, including the beneficiary, as the owners of the foreign entity's 1,000 shares of issued stock.

In a request for evidence, dated January 5, 2005, the director noted a deficiency in establishing the purported qualifying relationship, and asked that the petitioner provide a copy of both the foreign and United States entities' "official and legal" stock purchase registers. The director noted that the petitioner may also submit other legal documents verifying the petitioner's qualification as a multinational company. The director further noted a lack of evidence demonstrating a relationship between the United States company and [REDACTED] a separate United States company through which the petitioner was operating.

Counsel responded in a letter dated March 4, 2005, and submitted a bill of sale establishing the petitioner's ownership of [REDACTED]. The petitioner also submitted an organizational chart, on which the petitioning entity was identified as a 100% subsidiary of the foreign corporation. Counsel did not submit additional documentary evidence of the purported parent-subsidiary relationship.

In a June 2, 2005 decision, the director concluded that the petitioner had not demonstrated the existence of a qualifying relationship between the foreign and United States organizations. The director noted that the petitioner submitted only stock certificate number 11, and had not provided certificates 1 through 10. The director further noted counsel's failure to provide either company's stock purchase registry, instead submitting

a bill of sale evidencing the petitioner's purchase of [REDACTED]. The director addressed the ownership of the foreign company, recognizing that neither company shared a common majority stockholder. Consequently, the director denied the petition.

On Form I-290B, counsel references the foreign company as the parent of the petitioning entity. In a subsequently submitted brief, counsel restates the regulatory definition of "affiliate," yet does not address any further the purported parent-subsidary relationship.

Upon review, the petitioner has not demonstrated the existence of a qualifying relationship between the foreign and United States entities. 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. 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.

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. at 364-365. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. 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.

Here, the single stock certificate offered by the petitioner is not sufficient to establish the purported parent-subsidary relationship. The stock certificate, which is numbered eleven, suggests that ten stock certificates were previously issued to shareholders, thereby creating uncertainty as to the petitioner's true ownership. The petitioner has not demonstrated that the foreign entity is the sole or majority owner of the United States entity. 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)).

Additionally, the petitioner failed to provide its stock purchase registry specifically requested by the director. Counsel, who also neglected to submit any relevant documentary evidence on appeal, references only the statutory definition of "affiliate." The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner has not demonstrated that the United States and foreign corporations share common ownership and control or that the foreign entity owns and controls the petitioning entity. Absent additional documentary evidence, the AAO cannot conclude that a qualifying relationship exists between the foreign and United States entities. Accordingly, the appeal will be dismissed.

The AAO will next address the issues of whether the foreign and United States entities have been doing business.

The regulation at 8 C.F.R. § 204.5(j)(2) defines "doing business" as:

[T]he regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office.

The regulation at 8 C.F.R. § 204.5(j)(2) defines *multinational* as "[a] qualifying entity, or its affiliate, or subsidiary, [that] conducts business in two or more countries, one of which is the United States." The term "multinational," requires a showing that an affiliate or subsidiary of the petitioning entity is doing business in at least one country other than the United States.

As evidence of its operations in the United States, the petitioner submitted with the immigrant petition its business plan, verification of [REDACTED]' corporate registration in the State of Florida, a lease for warehouse space, an April 20, 2003 invoice for personnel hired from a staffing agency, its 2003 financial statements, Internal Revenue Service (IRS) Form 941, Employer's Quarterly Federal Tax Return, for the quarters ending September and December 2003, and IRS Form W-2, Wage and Tax Statement, for the year 2003. The petitioner also submitted copies of bank account statements, yet the account was titled in the names of the beneficiary and his wife.

With regard to the foreign corporation, the petitioner provided its certificate of incorporation, 2002 financial statements, and a July 3, 2003 letter from the company's accountant, in which he states that the corporation "has purchased a group of retail shops, one of which houses one branch of the company operations." The accountant appended a list of the company's employees as of May 31, 2003.

In her January 5, 2005 request for evidence, the director noted the insufficiency of the record in demonstrating the business operations of either the United States or foreign company. The director asked that the petitioner submit eight pieces of evidence from March 2003 to March 2004, such as telephone and utility bills, tax payments, and receipts, demonstrating that it was "actively engaged in 'ongoing' business one year prior to filing the I-140 petition." The director asked that the petitioner also submit four pieces of evidence dated October 2001 through October 2002 establishing the foreign entity's "ongoing" business operations.

In his April 4, 2005 response, counsel submitted invoices and sales receipts for [REDACTED] dated in April and May 2003, and March and May 2004, and two May 2003 United Parcel Service statements. As evidence of the foreign entity's business operations, counsel provided photocopies of invoices from [REDACTED] dated December 2001, and January, May, and June 2002.

In her June 2, 2005 decision, the director concluded that the petitioner had not demonstrated that either company had been doing business in its respective country for the requisite time period. The director noted that the documentation submitted as evidence of the petitioner's business referenced [REDACTED] not the petitioning entity.<sup>1</sup> The director also observed that the petitioner indicated in its March 24, 2004 letter that it would sell "herbal and homeopathic pharmaceuticals," yet the submitted invoices did not identify these products. With regard to the foreign entity, the director stated that the pharmacies identified on the invoices were not proven by the petitioner to be related to the foreign corporation. The director concluded that neither corporation had been doing business for an "ongoing" period. Consequently, the director denied the petition.

Counsel does not specifically address in his appellate brief the business operations of either the United States or foreign entities. Counsel submits the petitioner's March 31, 2004 business checking statement and a May 2003 advertisement of the petitioner's business. As evidence of the foreign entity's operations, counsel provides a copy of the previously submitted July 3, 2003 letter from the company's accountant. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Upon review, the director correctly concluded that the United States corporation was not doing business for at least one year prior to the filing of the immigrant petition. Based on the record, it does not appear that the petitioner was operating in any form prior to April 15, 2003, the date on which its purchase of [REDACTED] became effective. Accompanying business documents in the form of United Parcel Service statements and invoices dated April and May 2003, as well as the company's state registration on May 27, 2003, however, indicate that even after the April 15, 2003 purchase, the petitioner was performing preliminary steps to set up operations, including purchasing 1,000 sets of blank invoices on May 22, 2003. Moreover, based on the annual wages reported on the petitioner's IRS Form W-2 for 2003 and its federal and state quarterly wage reports, the beneficiary and the petitioner's other employee, who was employed in an unidentified position, were not employed by the petitioning entity until the third quarter of 2003. As a result, it does not appear that the company was engaged in "the regular, systematic, and continuous provision of goods" since March 30, 2003. 8 C.F.R. § 204.5(j)(2). Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The record does not contain evidence that the petitioner was doing business in the United States from March 30, 2003 through the date of filing. 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. at 165. As a result, the petitioner has not satisfied the regulatory requirement of doing business in the United States for at least one year.

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<sup>1</sup> The AAO recognizes the bill of sale evidencing the petitioner's ownership of "[REDACTED]" a corporation registered for business in the State of Florida.

Moreover, the petitioner did not provide sufficient evidence that the foreign entity was doing business following the beneficiary's transfer to the United States. In the instant matter, the limited documentary evidence provided by the petitioner does not establish that the foreign entity was engaged in the regular, systematic and continuous provision of goods at the time of filing the petition on March 30, 2004. The most recent financial statement provided for the foreign entity was dated December 31, 2002, fifteen months prior to the filing. While the petitioner submitted invoices in response to the director's request for evidence, they identify two pharmacies, which, although the petitioner identified on the foreign company's organizational chart as subsidiaries, have not been established as such through documentary evidence. The petitioner is obligated to submit sufficient documentation substantiating its claim that the foreign entity is engaged in the pharmaceutical business. 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. at 165. On appeal, counsel submits the same letter from the company's accountant and fails to provide any relevant and necessary documentation that the foreign entity has been doing business in Zimbabwe. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner has failed to demonstrate its classification as a multinational company, as required in the regulations. Accordingly, the appeal will be denied.

Beyond the decision of the director, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The petitioner's limited outline of such proposed job duties as "directing marketing," "securing locations for businesses, hiring employees, and "overseeing service/product development . . . [and] trade-related issues" fails to identify the specific day-to-day managerial or executive tasks to be performed by the beneficiary. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Additionally, it does not appear that the reasonable needs of the petitioner as a import, export, and retail sales company might plausibly be met by the services of the beneficiary and a second employee. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). The petitioner has not accounted for the employment of lower-level employees who would perform the daily non-qualifying functions of the business. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. at 604. The record does not demonstrate that the beneficiary would be employed in a primarily managerial or executive capacity. For this additional reason, the petition will be denied.

An additional issue not addressed by the director is whether the beneficiary was employed overseas in a primarily managerial or executive capacity. The petitioner noted in its March 24, 2004 letter that the beneficiary was employed by the foreign entity in the managerial position of chief executive officer, during which he established the company's operations, controlled finances, supervised three managers and a subordinate staff, developed and implemented a marketing plan for the business, hired personnel, and ensured the quality of the company's products. Again, the job description offered by the petitioner is vague and does not identify the specific managerial or executive job duties performed by the beneficiary. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The petitioner has failed to demonstrate the beneficiary's previous employment in a primarily managerial or executive capacity. The petition will be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The AAO notes that CIS previously approved two L-1A nonimmigrant petitions for the benefit of the beneficiary. The AAO recommends that the director review the approval of the beneficiary's present nonimmigrant I-129 visa for revocation. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427. Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L1-A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 8 C.F.R. § 214.2(l)(14)(i)(requiring no supporting documentation to file a petition to extend an L-1A petition's validity).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.