

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



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

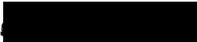
**PUBLIC COPY**

**SEP 14 2005**



B4

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **SEP 14 2005**

WAC 97 173 50188

IN RE:

Petitioner:



Beneficiary:

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, California Service Center, initially approved the employment-based petition. Upon subsequent review, the director issued a notice of intent to revoke approval and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of California in May 1995. It functions as a distributor of rubber products manufactured by the beneficiary's former foreign employer. The petitioner seeks to employ the beneficiary as its general manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

On June 9, 1997, the petitioner filed Form I-140, Immigrant Petition for Alien Worker. The director approved the petition on September 6, 1997. Upon subsequent review of the record, including information obtained from interviews and an investigator's report prepared by the U.S. Immigration and Naturalization Service Beijing sub-office, the director issued a notice of intent to revoke observing that the petitioner had not established: (1) that the beneficiary would be employed in a primarily managerial or executive capacity for the United States entity; (2) that the beneficiary had been employed in a managerial or executive capacity for the foreign entity prior to entering the United States as a nonimmigrant; (3) a qualifying relationship with the beneficiary's foreign employer; or (4) its ability to pay the beneficiary the proffered annual wage of \$24,000. The petitioner provided a rebuttal. The director, upon review of the record, determined that the petitioner had not overcome the grounds of revocation. This timely appeal followed.

On appeal, counsel for the petitioner submits a brief and documentation.

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 and 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 that 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. See 8 C.F.R. § 204.5(j)(5).

Section 205 of the Act, 8 U.S.C. 1155 (2005), states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

The first issue in this proceeding is whether the petitioner has established its ability to pay the beneficiary the proffered annual wage of \$24,000. The petitioner has provided copies of Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, issued by the petitioner to the beneficiary. The IRS Forms W-2 for the 1997, 1998, 1999, 2000, 2001, 2002, and 2003 years indicate that the petitioner paid the beneficiary the approximate proffered wage. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, the petitioner has demonstrated that it had previously employed the beneficiary and had paid the beneficiary at a salary equal to the proffered wage. The director's decision will be withdrawn as it relates to this issue.

The second issue in this proceeding is whether the beneficiary will be employed in a managerial or executive capacity for the United States entity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily

- i. manages the organization, or a department, subdivision, function, or component of the organization;
- ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- iv. exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision making; and
- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In a June 3, 1997 letter appended to the petition, the petitioner provided the following job description:

In that capacity [as general manager] [the beneficiary] will continue to be responsible for directing and managing overall operations of the U.S. subsidiary; setting up company policy and administrating [sic] its enforcement, participating [in] major business negotiations,

studying and researching the North America market, making personnel decisions, coordinating works between parent and subsidiary companies.

The petitioner also provided an employee list identifying four other employees with brief job descriptions. The petitioner indicated that: (1) the sales/marketing manager was in charge of overseeing sales activities, using market research and price analysis, establishing sales territories and sales projects, and coordinating with the general manager in negotiating and signing sales contracts; (2) the sales director organized commission based sales persons, executed contracts and orders, performed after-sales service, attended trade shows and trained sales persons; (3) the secretary/bookkeeper handled daily office secretarial jobs, scheduled appointments and meetings, took messages, and filed company monthly income and expense reports; and (4) the warehouse clerk communicated with shipping companies, agencies, and delivery companies, coordinated cargo receiving and transshipping, and checked products in storage. The petitioner also noted that it employed two salespersons working on commission.

On the basis of this information, the director approved the petition on September 6, 1997.

On July 17, 2004, upon review of the record, the director issued a notice of intent to revoke approval of the petition, observing that the petitioner's job description did not convey an understanding of the beneficiary's duties on a daily basis and did not show that the beneficiary was managing professional employees. The director also noted that the record did not show the goals and policies the beneficiary established within six months of his entry into the United States or the specific discretionary decisions the beneficiary exercised within six months of his entry into the United States. The director concluded that the record did not establish that the beneficiary would be employed in a managerial or executive capacity.

In an August 13, 2004 rebuttal, counsel for the petitioner provided the petitioner's typical day description of the beneficiary's duties. The petitioner indicated that the beneficiary typically met with employees to assign their work, instructed employees on how to resolve problems, read news and financial reports as well as competitor's advertisements, monitored trends, reviewed sales and financial reports to find problems and take actions to resolve problems and adjust plans, developed business strategy, signed business contracts with suppliers and customers that had been negotiated by staff, and reported to parent company. The petitioner also indicated that the beneficiary took personnel actions as needed, including hiring and firing employees and evaluating performance, negotiated the office lease and contracts with outside professional service providers such as accounting services, customs brokerage, and legal services, communicated with major clients on an oversight basis, represented the company in dealing with government agencies, customers, suppliers and employees, and consulted with legal providers and accounting services.

Counsel for the petitioner emphasized that the petitioner's staffing of its import and wholesale business with four employees (one bookkeeper/secretary, one sales/marketing manager, one sales director, and one warehouse worker) and two independent contractors (commissioned salespersons) is sufficient to accommodate the petitioner's operational needs and relieve the beneficiary from performing day-to-day operational duties. Counsel asserted that the director was improperly using the petitioner's number of employees as the determinative factor of the beneficiary's managerial or executive capacity when the beneficiary had been clearly identified as the petitioner's top manager receiving only general supervision from

the board of directors. Counsel also claimed that the evidence shows that the beneficiary's position involved significant authority over the generalized policy of the U.S. company. Counsel also provided an example of the beneficiary's decision-making relating to the type of products the company sold and an example of the petitioner's employment policy set up by the beneficiary.

The director considered counsel's description of the beneficiary's duties and counsel's arguments in rebuttal. Upon review of the record however, the director determined that the elaboration of the beneficiary's duties suggested that the beneficiary is engaged at the lowest levels of the organization, is serving as a first-line supervisor of sales personnel, and is performing the duties of the sales/marketing manager and a human resources specialist. The director concluded that the beneficiary would be performing normal operational duties and would not be supervising professional employees. The director further determined that the petitioner had not provided sufficient evidence to persuade that the beneficiary exercised specific discretionary decisions in the first six months since his entry into the United States, thus the petitioner had not demonstrated that the beneficiary served in an executive capacity.

On appeal, counsel for the petitioner contends that the beneficiary is not performing the petitioner's operational duties. Counsel points out that in a trading company normal operational duties include sales, accounting, and shipping duties and that the beneficiary's four subordinates and two independent contractors<sup>1</sup> perform these duties. Counsel also asserts that "supervisory duties alone do not make [the] beneficiary a first[-]line supervisor because he primarily perform [sic] executive or managerial duties such as decision making and organizing, which a first[-]line supervisor normally has no authority or capacity to perform." Counsel further contends that the beneficiary holds the highest position in the managerial hierarchy and that the petitioner has provided examples of the discretionary decisions exercised by the beneficiary and the policies established by the beneficiary. Counsel observes that the director cites no legal authority for requiring evidence of discretionary decisions made within the first six months of the beneficiary's entry into the United States.

Counsel's contentions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

On review, the petitioner's initial description of the beneficiary's duties was overly broad and did not demonstrate the beneficiary's daily duties. Specifics are clearly an important indication of whether a

---

<sup>1</sup> Although the record contains copies of the petitioner's sales agency agreements with two individuals, the record does not contain evidence that the petitioner paid these two individuals for any services rendered. The record does not contain IRS Forms 1099, Miscellaneous Income, or information on the petitioner's IRS Forms 1120, to establish that these two individuals were otherwise paid commissions.

beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Although the petitioner listed the beneficiary's subordinates and provided a general description of their job duties, the petitioner did not provide sufficient evidence of the actual roles each individual played in the petitioner's organizational hierarchy.

In rebuttal, the petitioner elaborated on the beneficiary's duties and decision-making. However, as the director observed, many of the beneficiary's duties were indicative of supervisory duties. Other duties were indicative of the beneficiary's involvement in the petitioner's day-to-day operations, such as monitoring trends and competitor's advertisements. The record did not clearly establish that the beneficiary would perform primarily managerial or executive duties. 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)). Moreover, when a beneficiary performs a mix of supervisory duties, administrative and operational duties, and some duties relating to the management of an organization, the petitioner must document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including managerial, operational, and supervisory tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as working with employees, assigning tasks, monitoring trends, communicating with clients, and performing public relations do not fall directly under traditional managerial duties as defined in the statute. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Counsel's assertion that the beneficiary's performance of decision-making and organizational duties elevates the beneficiary's role within the organization to that of a manager or an executive is not persuasive. Although the beneficiary makes some operational and administrative decisions and creates employment policies, these duties do not appear to consume a great deal of the beneficiary's time. The petitioner's description of the beneficiary's duties and those of his subordinates suggest that the majority of the beneficiary's time is spent on supervisory duties. If the beneficiary is involved in primarily supervising personnel, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. In this matter, the beneficiary's four subordinates are involved in sales and clerical work. The description of their duties does not suggest that their positions are professional or supervisory positions.

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. To establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not explained how the reasonable needs of the petitioning enterprise justify the beneficiary's performance of primarily first-line supervisory duties. 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. The AAO notes, in addition, that the petitioner has not

continued to expand in personnel over the years since the initial filing of the petition, but rather has further reduced its size, according to information on the petitioner's IRS Forms 1120 and the amount of salaries paid.

The petitioner has not established that the description of the beneficiary's duties satisfies the statutory definition of executive capacity. The beneficiary in this matter may qualify under other immigrant classifications but does not qualify as a multinational manager or executive. The director's decision on this issue will be affirmed. The AAO notes for the record however that the director does not explain the source of the requirement that the petitioner provide examples of the beneficiary's discretionary decision-making within the first six months of the beneficiary's entry into the United States. The director's comments as they relate to a "six month period" will be withdrawn.

The third issue in this matter is whether the beneficiary was employed in a managerial or executive with the foreign entity. The petitioner initially indicated that the beneficiary held the position of export department manager for the foreign entity and was responsible for export business and wages arrangement. Upon review of the record, the director observed that the petitioner's description of the beneficiary's duties for the foreign entity was general and that the record did not clearly identify the beneficiary's foreign entity subordinates or their job duties.

In rebuttal, the petitioner provided a copy of the foreign entity's verification of the beneficiary's employment and job duties including: import and export business, international market development, employee recruitment and job assignment, and wage arrangement and employee promotion. The petitioner also provided the foreign entity's list of the beneficiary's eight subordinates and noted that the subordinates performed duties such as negotiating and signing contracts, file management, import and export operations, market investigation, planning, and freight arrangement.

The director determined that the evidence provided was not sufficient to establish that the beneficiary was relieved from performing the foreign entity's operational tasks or that the beneficiary supervised individuals holding professional positions. The director also determined that the description of the beneficiary's duties was general and insufficient to classify the beneficiary as a multinational manager or executive.

On appeal, counsel for the petitioner provided the original verification from China and asserts that the evidence shows that the beneficiary had been employed in a managerial or executive capacity for one year prior to his transfer to the United States.

Counsel's assertion is not persuasive. The record does not contain a detailed description of the beneficiary's duties for the foreign entity. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. Although the petitioner has provided a list of the beneficiary's subordinates, as the director observed the description of the beneficiary's subordinates' job duties does not demonstrate that the beneficiary was relieved of performing primarily operational tasks. 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. 593, 604 (Comm. 1988). The record is insufficient to establish the beneficiary's duties involved primarily

managerial or executive duties for the foreign entity. The petitioner has not provided evidence sufficient to overcome the director's decision on this issue. The director's decision on this issue will be affirmed.

The last issue in this proceeding is whether the petitioner has established a qualifying relationship between the petitioner and the foreign entity. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity.

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.

*Multinational* means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

*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 record includes inconsistencies regarding the petitioner's qualifying relationship with the foreign entity. The petitioner initially stated that it had a registered capital of \$10,000 and had issued 10,000 shares with a par value of \$1 to the beneficiary's foreign employer. The petitioner provided its Articles of Incorporation stating that it was authorized to issue 10,000 shares. The petitioner also provided its California Notice of Transaction showing that the value of its sold securities was \$10,000 in money and \$40,000 in consideration other than money. The petitioner provided a stock certificate issued to the foreign entity in the amount of 10,000 shares.

The record also contains the petitioner's IRS Forms 1120, U.S. Corporation Income Tax Return, for each year beginning in 1995 through 2003, each showing on Schedule L, Line 22(b) that the petitioner's stock is valued at \$58,000 and also listing the foreign entity as the 100 percent owner of the petitioner. The record also contains information obtained from a June 28, 2001 interview with the foreign entity's senior marketing engineer and chief of administrative office. The investigator indicates that the foreign entity's senior marketing engineer confirmed that the relationship between the foreign entity and the petitioner was "a relationship between partners or business cooperators" consisting of rubber product contracts with the foreign

entity as the supplier. In the notice of intent to revoke the director observed that the petitioner had not provided evidence that the foreign entity had, in fact, paid for its interest in the petitioner.

In rebuttal, counsel for the petitioner asserts that the foreign entity made its \$58,000 investment in the petitioner through the transfer of goods for the petitioner's initial inventory. Counsel notes that the petitioner is not able to recover the business documentation relating to the initial transfer of inventory because the transfer took place over nine years ago and the petitioner maintains its records for only seven years as legally required. Counsel submits a letter from the foreign entity's chief finance officer verifying that the claimed parent company made its \$58,000 investment through the transfer of goods in 1995. Counsel also submits a statement from the foreign entity's import and export manager (previously referred to as the senior marketing engineer) wherein she provides her version of the June 28, 2001 interview. The import and export manager states that she indicated that the petitioner was a subsidiary of the beneficiary's foreign employer and that the petitioner obtained orders and the foreign entity produced and shipped the products to the United States, and that the petitioner collected and transferred payment to the foreign entity after deducting its share of profits to cover expenses.

The director determined that the foreign entity's letters were not corroborated by evidence such as wire transfer receipts and bank statements and contradicted the findings of the investigator's interview of June 28, 2001. The director determined that the conflicting evidence cast doubt on the foreign entity's letter. The director concluded that the petitioner had not established a qualifying relationship with the beneficiary's foreign employer.

On appeal, counsel for the petitioner notes that the import and export manager's statement is supported by a statement from the foreign entity's chief financial officer. Counsel contends that in a dispute regarding two different interpretations of the same event, other evidence such as the foreign entity's chief financial officer's statement and the petitioner's IRS Forms 1120 should be considered. Counsel asserts that the petitioner has submitted sufficient evidence to establish that the beneficiary's foreign employer and the U.S. employer are related in a qualifying parent and subsidiary relationship.

Counsel's assertions are not persuasive. The petitioner has provided disparate versions of how it was capitalized. Initially, it appeared that the petitioner had been capitalized with \$10,000 in money and \$40,000 in other consideration. However, the petitioner's Articles of Incorporation indicate that the par value of the petitioner's stock is \$1 per share or \$10,000 for the 10,000 shares issued. The petitioner's IRS Forms 1120 indicate that the value of the petitioner's common stock is \$58,000. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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. at 593; *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. 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 362. 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. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The petitioner has not provided sufficient evidence in rebuttal or on appeal to clarify the inconsistencies in the petitioner's capitalization. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. The record does not clearly establish that the relationship between the petitioner and the beneficiary's foreign employer is a parent/subsidiary relationship rather than a simple contractual relationship between a supplier and a distributor of goods. The petitioner has not established that a qualifying relationship exists between the petitioner and the foreign entity. The director's decision on this issue will be affirmed.

CIS regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed. See 8 C.F.R. § 245.1(a). If the beneficiary of an approved visa petition is no longer eligible for the classification sought or if the petition was approved in error, the director may seek to revoke his approval of the petition pursuant to section 205 of the Act, 8 U.S.C. § 1155, for "good and sufficient cause." Notwithstanding the CIS burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

The record does not contain evidence that the beneficiary qualifies for this visa classification. Based on the record of proceeding, the director's initial approval of this petition was contrary to the statute and plainly in error. Here, the petitioner failed to offer sufficient evidence in explanation or rebuttal to overcome three of the issues raised in the director's notice of revocation. The director's decision will be affirmed.

The approval of the petition will be revoked for the above stated reasons, with each considered as an independent and alternative basis for revocation. 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.