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FILE: WAC 03 133 53323 Office: CALIFORNIA SERVICE CENTER Date: **SEP 15 2005**

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.


f Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California 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 seeking 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 operating under the laws of the State of California that is engaged in international trade and software development. The petitioner seeks to employ the beneficiary as its president.

The director denied the petition concluding that the petitioner had not established that: (1) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity; or (2) a qualifying relationship exists between the foreign and United States entities.

Counsel subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel claims that the record, including the appellate brief and new documentary evidence submitted on appeal, demonstrates that the beneficiary would be employed in both a primarily managerial and executive capacity and that a qualifying relationship exists between the foreign and United States entities.

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 first issue in this proceeding is whether the beneficiary would be employed by the United States company in a primarily managerial or executive capacity.

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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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.

The petitioner filed the instant immigrant petition on March 24, 2003 noting that the beneficiary would be employed as the president of the five-employee corporation. In an appended letter, dated January 21, 2003, the petitioner's former counsel stated that the beneficiary would exercise managerial authority over four workers employed in the petitioner's marketing and administrative departments, as well as over a research and development "team" comprised of four independent contractors. Counsel provided the following outline of the beneficiary's job responsibilities as president:

1. She determines company's policies and establishes business goals. With business nature in mind, she considers company's marketing capability, financial capability and human resource. She also considers social and economic environment here in the United States. Then, she determines and formulates company's policies of product, price, distribution, promotion, finance and human resource. And she sets business goals regarding market share, revenue and profit.
2. She devises an evaluation system and assigns authorities and responsibilities to her supervisees. She reviews marketing and financial reports to ensure that company's objectives are achieved. She analyzes operations to evaluate company's performance and to determine areas of cost reduction and program improvement. She directs financial and budget activities to fund operations and increase efficiency.
3. She exercises her discretionary authority to make decisions. If business environment changes, she adjusts policies regarding product, price, distribution, promotion, finance and human resources. She determines business orientation and operation.
4. She reports to the parent company in China. The report concerns the performance of the U.S. subsidiary and business opportunities here in the United States. She also receives instructions and information from the parent company.

Counsel provided an organizational chart of the United States company, stating that it demonstrates "that the beneficiary supervises and controls the work of both managerial and professional employees." The petitioner's organizational chart identified the beneficiary as its president, supervising a marketing manager, two marketing personnel, an administrative secretary, and a research and development team. Counsel provided a brief outline of the job duties performed by each employee and referenced the level of education completed.

In support of the beneficiary's employment in a qualifying capacity, counsel referred to two unpublished AAO decisions in which the beneficiary of a one-person office has been approved for an L-1A nonimmigrant petition.

Counsel also submitted a letter from the petitioner, dated January 21, 2003, in which its president outlined the same job responsibilities as those stated above. The petitioner provided the following description of the beneficiary's "typical working day":

At 9:00 am, she started her work. She reviewed faxes and letters. She assigned employees to handle some urgent matters. She would hold a short meeting with her supervisees, briefly reviewing ongoing business and assigning new tasks.

At 11:00 am, she started to prepare a report to the parent company in China.

At 11:30 am, mail arrived. She read the concerned letters and documents.

At 12:00 am, she went for an appointed business lunch.

At 1:30 pm, she was back from the lunch. She continued to write the report.

At 2:00 pm, she put aside the report and went to a negotiation with visiting business partner.

At 4:00 pm, her supervisees came to her office to report business matters have occurred during the day. She held a discussion with them and gave them instructions.

At 5:00 pm, the time in China was 9:00 am. She made phone calls to the parent company.

Around 6:10 pm, she finished her office work and drove back home. At home in the night, she continued to make phone calls to China.

The petitioner noted that the beneficiary is qualified for the position of president as a result of both her bachelor's degree in engineering and her prior work experiences which included working for the foreign entity as its deputy general manager of finance and its financial manager.

In a request for evidence, dated June 1, 2004, the director requested that the petitioner submit the following documentary evidence demonstrating the beneficiary's employment as a manager or an executive: (1) an organizational chart of the United States entity, briefly describing the job duties, educational levels, and salary of all employees under the beneficiary's supervision; (2) a detailed description of the job duties performed by the beneficiary on a "typical day"; and (3) California Employment Development Department (EDD) Form DE-6, Quarterly Wage Report, for the first quarter of 2003.

Counsel responded in a letter dated August 19, 2004. Counsel stated that as the company's president, the beneficiary would exercise the following responsibilities: (1) implement the organization's annual business plan; (2) direct the daily operations; (3) fulfill business objectives by coordinating with the foreign entity; (4) monitor and evaluate the personnel; (5) hire and train employees; and (6) develop ways to lower costs and raise competitiveness. Counsel stated that the petitioner also had the authority to review and approve expenses, promote and reward employees, and utilize assets of the company. Counsel submitted a copy of the petitioner's business plan, which outlined the "objectives" to be achieved by the beneficiary.

With regard to the petitioner's personnel, counsel provided essentially the same evidence as previously submitted with the immigrant petition, including the company's organizational chart and descriptions of the job duties performed by the four subordinate employees. As this information is part of the record, it will not be entirely repeated herein. Counsel noted that the petitioner's software research and development center hires "professionals" on a contractual basis for its "Data Mining and Customer Relationship Management" project. Counsel submitted resumes for three of the four "research and development scientists" contracted by the petitioner and diplomas for the beneficiary's subordinate employees. Counsel also provided copies of the petitioner's quarterly tax returns, including its return for the quarter ending March 2003, which indicated that the beneficiary and three other workers were employed during this period. The AAO notes that one of the petitioner's marketing employees referenced on the organizational chart was not identified on its March 2003 quarterly tax return.

In a decision dated December 17, 2004 the director determined that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director stated that the job description for the beneficiary's proffered position restates the statutory definitions of "managerial capacity" and "executive capacity." The director noted that the job

description did not identify the specific activities associated with the beneficiary's job responsibilities or the frequency in which any job duties would be performed. Referencing the beneficiary's "typical working day," the director stated that the beneficiary's employment "is more indicative of an employee who is performing the necessary tasks to provide a service or to produce a product," and concluded that the beneficiary would not be directing the management of the organization. The director further concluded that the beneficiary's subordinate workers are not professional, supervisory or managerial employees. Consequently, the director denied the petition.

In an appeal filed on January 18, 2005, the petitioner's present counsel states that the new documentation submitted with the brief on appeal demonstrates that the beneficiary would be employed in the United States as both a manager and an executive. Counsel explains in the appended appellate brief that the beneficiary is qualified for the position of president as she has "substantial managerial experience" with the foreign entity and with the Chinese government agencies. Counsel references the four elements of the definition of "managerial capacity," and states that examples of the beneficiary's employment as a manager include: (1) the beneficiary's supervision of shipments of equipment valuing approximately \$6.8 million from Motorola to the foreign entity; (2) the beneficiary's authorization of sales transactions; (3) the responsibility held by the beneficiary for the work performed by the research and development team; and (4) the beneficiary's selection of all workers employed by the petitioner. Counsel explains:

[The] Beneficiary manages performance – her own and that of the staff. The many transactions referred to above require oversight and, at times, direct involvement by beneficiary, especially when problems arise. Countless communications (phone calls, emails) between beneficiary and department heads of customers, as well as twice this number of communications with staff, are all part of beneficiary's day-to-day supervision and senior level responsibility. Again, no other employee in the company has the authority to perform these duties.

Counsel further asserts that the beneficiary would also be employed in a primarily executive capacity. Citing the statutory requirements for "executive capacity," counsel states that as an officer of the company, the beneficiary has exercised her executive authority by signing the petitioner's quarterly and annual corporate tax returns, a currency transfer request form, and a commercial lease, all of which require the signature of an authorized officer. Counsel states:

In [the petitioning entity], the duties of manager and executive (president) overlap, which is not uncommon in start up companies, especially in the high tech industry. Beneficiary directs the management (administrative duties) of the organization and manages essential functions, such as:

- Tax reports
- Payroll approvals
- Employee relations: hiring/firing and evaluations
- Money transfers and invoice payments

Counsel acknowledges that the job description previously offered for the beneficiary failed to describe the managerial and executive job duties performed by the beneficiary, but states that the petitioner could not effectuate \$6,000,000 in sales without the beneficiary's strong leadership and management. Counsel claims "affirmation of this view is found in [the] Petitioner's twice approved L-1A applications on behalf of the beneficiary." Counsel also references two unpublished AAO decisions in which nonimmigrant petitions were approved for the beneficiary as a functional manager even though the subordinate employees were not professional or supervisory workers.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

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). Here, the petitioner has failed to provide a comprehensive description of the specific daily managerial or executive job duties to be performed by the beneficiary. Although afforded three opportunities during which to describe the beneficiary's qualifying job duties, the petitioner's former and present counsel submitted vague and limited outlines. As correctly noted by the director, in both her January 21, 2003 and August 19, 2004 letters, the petitioner's former counsel essentially restated portions of the statutory definitions of "managerial capacity" and "executive capacity" as the beneficiary's job responsibilities. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44)(A) and (B). Specifics are clearly an important indication of whether a 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). Counsel also fails to specifically describe the daily job duties to be performed by the beneficiary while "implement[ing] the yearly business plan," "direct[ing] daily operations," and "fulfill[ing] the objectives of the North America business." The AAO cannot be expected to speculate as to the managerial or executive job duties to be performed by the beneficiary in connection with achieving the objectives of the petitioning entity or the "daily operations" the beneficiary will manage and supervise. 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. *Id.* at 1108.

Despite counsel's acknowledgement on appeal of the limited job descriptions provided by former counsel, counsel failed to submit a more thorough account of the beneficiary's daily job duties. It appears that counsel is relying on the beneficiary's job title and the success of the petitioning entity to establish the beneficiary's employment in a qualifying capacity. Although the beneficiary is referred to as "president," a "duly authorized corporate officer," a "strong leader" and an "effective manager," the AAO is not compelled to deem the beneficiary to be a manager or executive simply because of the managerial or executive titles she possesses. Moreover, the successful operations of the petitioning entity in the United States do not necessarily establish the beneficiary as a manager or an executive. Counsel's limited claim that the beneficiary manages such "essential functions" as tax reports, payroll approvals, employee relations, money transfers and invoice payments is not sufficient. Furthermore, neither the petitioner's former or current counsel provided a legitimate account of the qualifying job duties performed by the beneficiary on a "typical day." Other than the claim of supervising subordinate employees, the sparse description fails to even generally state any managerial or executive job duties. Again, the actual duties themselves reveal the true nature of the employment. *Id.*

With regard to the petitioner's staff, there is no evidence that the beneficiary actually supervises the software research and development team. Counsel merely states on appeal that the beneficiary is "accountable for this unit's work," which includes performing tasks to further the petitioner's marketing objectives. The resumes for the research and development scientists, however, indicate that each is presently employed by an organization other than the petitioning entity.¹ In addition, the petitioner's corporate tax return does not reflect payments made for outside labor or contractors. As a result, it does not appear that the beneficiary maintains control over the independent contractors. The beneficiary cannot be deemed to exercise managerial or executive authority over this team.

The AAO notes an inconsistency in the petitioner's purported staff. Of the four employees identified by the petitioner as subordinate workers, three are reflected on its quarterly wage report for March 2003, the period during which the immigrant petition was filed. According to the petitioner's quarterly wage report, the petitioner employed only one salesperson. While the number of workers employed by the petitioner is not, by itself, determinative of whether the beneficiary is employed in a primarily qualifying capacity, the petitioner is obligated to clarify this discrepancy. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). This information is especially relevant to determining whether the petitioner employs a subordinate staff sufficient to relieve the beneficiary from performing non-managerial and non-executive functions of the business. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel's mistakenly relies on two prior approvals of a nonimmigrant petition for the benefit of the beneficiary as evidence of the beneficiary's employment in a primarily managerial or executive capacity. It must be noted that many I-140 immigrant petitions are denied after Citizenship and Immigration Services (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 L-1A 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).

Counsel further referred to two unpublished decisions in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

¹ The AAO notes that the petitioner provided resumes for only three of the four scientists. As a result, the employer of the fourth individual is unknown.

Based on the foregoing discussion, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The AAO will next 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.

Counsel stated in her January 21, 2003 letter that the petitioning entity, incorporated in the United States on May 1, 2001, is the wholly owned subsidiary of the Chinese foreign company, Powerise Information Technology Co., Ltd. (Powerise). As evidence of this relationship, counsel submitted: (1) the petitioner's articles of incorporation; (2) the minutes from the petitioner's May 14, 2001 organizational meeting, during which the officers both authorized the issuance of 100,000 shares of stock to Powerise in exchange for \$100,000 and recognized a May 8, 2001 wire transfer from Powerise to the petitioner in the amount of \$100,000; (3) a stock certificate identifying Powerise as the owner of 100,000 shares of stock in the petitioning entity; (4) the petitioner's stock transfer ledger confirming the stock issuance to Powerise; (5) a Notice of Transaction Pursuant to Corporations Code Section 25102(f); (6) a telegraphic transfer application form, dated May 8, 2001, reflecting a transfer of \$100,000 from "Bestar Technology Limited" for the benefit of Powerise to the petitioning entity; (7) a bank notice confirming a debit in the amount of \$100,000 from the account held by Bestar Technology Limited; (8) the petitioner's bank statement verifying receipt of the transferred monies; and (9) a certificate of incorporation indicating a change in the corporate name of Bestar Technology Limited to "Powerise (Hong Kong) Company Limited."

In his June 1, 2003 request for evidence, the director asked that the petitioner provide an explanation why the funds transferred to the petitioner originated with Bestar Technology Limited rather than with Powerise, the purported parent corporation.

Counsel responded in an August 19, 2004 letter, stating:

On May 8, 2001, the newly acquired Hong Kong company, [REDACTED], wired \$100,000 to the petitioner as the initial investment from [REDACTED] Ltd., the parent company in China. Attached please find copies of wire transfer documents.

[REDACTED] was acquired by [the foreign entity] on April 1, 2001, and accordingly is the subsidiary company in Hong Kong.

Counsel explained the difficulty in transferring money directly from a Chinese company to a foreign corporation, noting that a Chinese company must first receive approval from the Chinese government. Counsel stated that although the foreign entity had filed an application with the Chinese government, the monies were instead transferred from the foreign entity's subsidiary, [REDACTED]. As evidence of a parent-subsiary relationship between the foreign entity and [REDACTED] counsel submitted the minutes from [REDACTED] board of directors meeting, a "Transfer of Shares" confirmation, the first written resolution of [REDACTED] a stock transfer form, and "sold" and "bought" notes.

Counsel again submitted copies of the telegraphic transfer application form and bank statements confirming the \$100,000 deposit in the petitioning entity from the foreign corporation. Counsel also provided two approvals from the Ministry of Foreign Trade and Economic Cooperation of People's Republic of China, dated October 30, 2001 and November 1, 2001, granting the foreign entity authorization for the establishment of a United States subsidiary.

In his December 17, 2004 decision, the director determined that the petitioner had not demonstrated the existence of a qualifying relationship between the petitioning and foreign entities. The director noted confusion in the record, stating that it is not clear whether the petitioner is claiming to be a subsidiary or an affiliate of the foreign entity. The director stated that the petitioner has not "resolved inconsistent information" regarding the monies transferred from [REDACTED] rather than the foreign entity. The director further stated that the foreign company cannot circumvent the Chinese currency transfer laws by initiating a transfer from the company in Hong Kong. The director refused to accept the foreign entity's "illicit activity" as an excuse for its lack of documentation. Consequently, the director denied the petition.

On appeal, counsel asserts that the petitioning organization is a wholly owned subsidiary of [REDACTED] and references the previously outlined documents as both "direct" and "circumstantial" evidence of the relationship. Counsel states that the petitioner's former counsel misrepresented the process by which the petitioning entity was established, explaining that the foreign entity did not attempt to circumvent Chinese laws or engage in illicit activity. Counsel states "it is *legal and procedurally easier* to transfer funds from a parent company to a subsidiary in another country by using a subsidiary in Hong Kong." (emphasis in original). Counsel submits a letter from the chairman and chief executive officer of the foreign corporation confirming the permissible use of a third party to transfer funds on behalf of the Chinese parent company.

Upon review, the petitioner has not established that a qualifying relationship exists between the United States and foreign entities.

The regulation at 8 C.F.R. § 204.5(j)(3)(C) requires that the United States employer be the same employer or a subsidiary or affiliate of the organization *by which the alien was employed overseas*. (emphasis added). Here, according to counsel's January 21, 2003 letter and the beneficiary's attached resume, the beneficiary's

foreign employer was [REDACTED]" which counsel notes is a subsidiary of [REDACTED] Co., Ltd. Therefore, the relevant relationship to be examined is between the petitioner and [REDACTED], Ltd., the beneficiary's foreign employer.

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, 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.

The record does not establish that the petitioning entity is an affiliate of the beneficiary's foreign employer, [REDACTED]. Counsel claims that both companies are subsidiaries of the foreign corporation, [REDACTED]. However, the record lacks conclusive documentation demonstrating ownership of both the petitioning entity and the beneficiary's foreign employer by [REDACTED]. With regard to the beneficiary's foreign employer, counsel merely claimed in her January 21, 2003 letter that [REDACTED] Ltd. is a subsidiary of [REDACTED]. However, other than [REDACTED] organizational chart and 2001 annual report, both of which name [REDACTED] Co., Ltd. as a subsidiary, the record does not contain documentary evidence establishing [REDACTED] ownership and control of [REDACTED] Ltd. As noted above, such relevant evidence would include stock certificates, as well as corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings. Without this material evidence, the AAO cannot conclude that an affiliate relationship exists between the petitioning entity and the beneficiary's foreign employer. 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).

Even if the petitioner had demonstrated an affiliate relationship between the United States entity and the beneficiary's foreign employer, the record lacks conclusive evidence that Powerise furnished consideration for its purported ownership interest in the petitioning entity. While the petitioner submitted substantial documentation demonstrating the transfer of monies from [REDACTED] to the petitioner on behalf of [REDACTED] there is no indication that the funds transferred by Bestar Technology Limited were in fact funds belonging to or originating with [REDACTED]. There is no evidence in the record documenting a transfer of funds from [REDACTED] to [REDACTED] for the purpose of funding the purchase of the petitioner's stock. Nor has counsel offered an explanation as to the actual owner of the transferred monies. 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)).

Based on the foregoing discussion, the petitioner has not established the existence of a qualifying relationship between the petitioner and the beneficiary's foreign employer. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not demonstrated that the beneficiary was employed by the overseas entity in a primarily managerial or executive capacity as specifically required in the regulation at 8 C.F.R. § 204.5(j)(3). Both counsel and the petitioner provided limited descriptions and broadly-cast job responsibilities for the beneficiary's employment as the general manager of finance. Such claims as "formulated company's financial policies and objectives," "conferred with managers . . . to discuss company's financial status and capabilities," "finalized financial strategies and goals," "coordinated financial activities," and "prepared and reviewed financial reports" do not sufficiently explain the true managerial and executive job duties primarily performed by the beneficiary 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. at 1108. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.* Consequently, 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 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.