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U.S. Citizenship
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Services

By

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 10 2007
WAC 05 185 51185

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

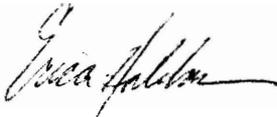
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based visa 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 visa 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 California that is engaged in the international marketing of nutritional supplements and claims to be the subsidiary of the beneficiary's foreign employer. 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 petitioning entity in a primarily managerial or executive capacity; or (2) the foreign entity and the United States organization enjoyed a qualifying relationship on the date of filing.

On appeal, counsel for the petitioner contends that Citizenship and Immigration Services (CIS) erred in denying the immigrant visa petition. Counsel claims CIS misinterpreted and ignored documentary evidence of the beneficiary's employment as a "senior executive" and of a parent-subsidiary relationship between the foreign and United States companies. Counsel submits a brief in support of the appeal.

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 entity 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 petition on June 16, 2005, noting the beneficiary's proposed employment as the president of the ten-person United States company. In an appended June 9, 2005 letter, the petitioner described the beneficiary's "senior most position" as involving "overall accountability for the company reporting solely and directly to the [foreign entity's] board of directors" and "wide latitude and discretion in formulating the company's goals, policies, and strategies." The petitioner stated:

[The beneficiary] leads the company by developing strategic and business planning, sales and marketing agenda and distribution of the [foreign entity's] products. He organizes and supervises the operation of [the petitioning entity] and institutes plans and policies to increase

operational efficiency and profitability. [The beneficiary] also directs the financial affairs of the company, including budgeting, cost controls and capital expenditures and provides leaderships [sic] in creating new initiatives for [the petitioner] through application of management principles and effective administration of the annual and overall budget of the company. The job duties of this senior position requires constant interface and liaison with the parent company in China in order to achieve the parent company's sales and marketing goals. In carrying out these duties, [the beneficiary] possesses executive authority over supervisory and professional employees and support staff and exercise discretionary authority over all operations involving [the petitioning entity] and the sales and distribution of the parent company's products.

The petitioner outlined the following "duties and responsibilities" related to the beneficiary's position as president:

- Plan, organize, direct, control, and coordinate the operations of [the petitioning entity] and its major departments/programs;
- Pioneer entry and movement into the North American and global market[;]
- Assess global raw materials and nutraceuticals exchange prices and their interrelationship with U.S. demands, China-side production and tooling, distribution costs, manufacturing costs, and turn around times for formulating short and long-term strategies;
- Oversee executives who direct the activities of various departments and implement the organization's policies on a day-to-day basis;
- Evaluate production capabilities and their ability to meet present and anticipated demand of industrial aluminum;
- Set departmental objectives;
- Authorize spending and coordinate human resource efforts;
- Evaluate production and marketing performance and compare them against competitors as a baseline for setting future strategies;
- Interpret nutraceuticals markets strategies;
- Analyze and interpret ideas into a logical strategy for increasing presence in North American and global market;
- Identify areas of strengths and weaknesses in the market and develop and implement company policies, standards, changes in operation and systems in order to optimize productivity and the bottom line;
- Ascertain needs and goals;
- Review and approve operating budget;
- Review operational, sales, and statistical reports prepared by management and subordinate staff in order to determine whether a course of action needs to be maintained, revised or abandoned;
- Establish relationships with manufacturers;
- Design infrastructure and ensure proper training of personnel is conducted to maintain highest levels of quality control;
- Recruit executives and management to implement the functions of the company;
- Advise parent company's board of directors on North America and global operations and outlook;

Formulate sales strategies and implementation plans for execution by sales and marketing divisions;
Negotiate high level agreements; and
Create and implement guidelines for identifying projects that go beyond budget or exceed scope.

The petitioner further explained the beneficiary's role in "[f]ostering high-level business relations" and determining where to allocate capital and resources.

An enclosed organizational chart of the petitioning entity identified the beneficiary's subordinates as occupying the positions of vice-president/chief financial officer, accountant, purchasing manager, international trade manager, marketing manager, international marketing representatives I and II, and marketing representatives I and II. The petitioner provided a brief description of the job duties associated with each position.

The director issued a request for additional evidence on July 26, 2005, directing the petitioner to submit the following documentation with respect to the beneficiary's proposed employment: (1) an organizational chart reflecting the United States company's staffing levels on the date of filing the immigrant visa petition and a brief job description of the subordinate positions; (2) a detailed description of the job duties performed by the beneficiary during a "typical day"; and (3) copies of the original quarterly wage reports filed by the petitioner for the first and second quarters in 2005.

Counsel for the petitioner responded in a letter dated October 14, 2005, addressing the previously submitted organizational chart and providing an additional copy for the record. Counsel referenced a chart describing the beneficiary's typical day, which, as it is already part of the record, will not be repeated herein. Counsel stated that the job description establishes the beneficiary's role in generating revenue for the petitioner "through garnering, developing and maintaining business partnerships and relationships." Counsel further stated:

As an executive, [the beneficiary] must remain abreast of the worldwide market and its impacts on production and products [the petitioner] is able to provide. [The beneficiary] is also directly responsible for ordering the production manufacturing levels This requires the manufacturing facility to gear up production facilities and staff additional workers. This type of decision making can only be performed at an executive level.

Counsel submitted a copy of the petitioner's quarterly wage report ending June 30, 2005, which indicated that seven workers were employed in June, the month during which the instant petition was filed. The AAO notes that this does not comport with the petitioner's claims of employing a ten-person staff on the filing date. 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).

In a January 4, 2006 decision, the director concluded that the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director outlined a portion of the beneficiary's proposed job duties, stating that they "are more indicative of an employee who is performing the necessary tasks to provide a service or to produce a product." The director also considered the beneficiary's subordinate staff, noting that the vice-president/chief executive

officer and international marketing representative would be employed on a part-time basis. The AAO notes that the record does not support the director's finding that these two workers would occupy part-time positions in the petitioning entity. The director also pointed out that the employees named as the company's marketing manager and marketing representative were not identified on the organization's second quarter tax return. The director stated that the petitioner had not identified who would perform the duties associated with these two positions. The director also determined that the beneficiary would not be employed as a function manager. Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal on February 6, 2006. In an appellate brief, dated March 7, 2006, counsel contends that as the petitioner's president, the beneficiary directs the operations of both the United States and foreign companies "with responsibility for over 273 employees worldwide." Counsel claims that the job descriptions and sample communications offered by the petitioner "illustrate the [beneficiary's] high-level relationship building with partner companies at the top executive levels . . . [and] the fact that as [the] top executive of all operations (both U.S. and China) [the beneficiary] monitors the activities of the manufacturing facilities in China in order to ensure production and other goals are on target." Counsel contends that CIS ignored examples of the executive-level decisions made by the beneficiary.

Counsel states that the director incorrectly determined that two of the beneficiary's subordinates were employed as part-time workers and concluded that the beneficiary would assume the performance of the non-qualifying job duties associated with each position. In response to the director's observation that two employees were omitted from the petitioner's quarterly tax report, counsel references an earlier quarterly report, stating that CIS did not take into consideration changes to personnel subsequent to the filing the immigrant visa petition.

Upon review, the petitioner has not established that the beneficiary would be employed by the United States entity 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).

The job duties initially provided by the petitioner in its June 9, 2005 letter are not sufficiently detailed so as to identify the specific managerial or executive job duties associated with the beneficiary's employment as president. For example, the petitioner described the beneficiary's position with overly broad statements, such as "[p]ioneer[ing] the [foreign entity's] entry and movement into the North American and global market," "[o]versee[ing] executive who direct the activities of various departments," "implement[ing] the organization's policies on a day-to-day basis," "[setting] departmental objectives," "[a]nalyz[ing] and interpret[ing] ideas into a logical strategy for increasing presence in North America and global market," "[a]scertain[ing] needs and goals," "design[ing] infrastructure and ensur[ing] proper training of personnel," and "[r]ecruit[ing] executives and management." Also, the petitioner did not clarify the managerial or executive job duties related to the beneficiary's additional responsibilities of assessing raw material and exchange prices, evaluating the foreign entity's production capabilities, interpreting marketing strategies, "identify[ing] areas of strengthens and weaknesses in the market," and formulating sales strategies. 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 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).

The AAO notes that counsel's additional claim on appeal that the beneficiary possesses "responsibility for over 273 employees worldwide" is equally vague. Counsel's blanket statement absent concrete evidence documenting the beneficiary's purported executive authority over the foreign entity's employees is not sufficient to corroborate the claim of the beneficiary's qualifying managerial or executive employment in the United States entity. 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).

While additional evidence offered by the petitioner suggests that some portion of the beneficiary's time would be spent on managerial or executive job duties, it does not corroborate the claim that the beneficiary would be employed in a *primarily* managerial or executive capacity.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In support of the beneficiary's executive role in furthering the company's business relations, the petitioner submitted copies of daily correspondence via electronic mail between the beneficiary and suppliers. Many of the e-mails, however, pertain to such matters as product samples, delivery times, shipping, and pricing, tasks that are more likely performed in the company's marketing departments rather than by the purported president of the organization. In fact, the job description of the international marketing representative includes such duties as contacting customers, offering price quotes, and ensuring proper and timely shipping. The content of the beneficiary's correspondence undermines the repeated claims made by the petitioner and counsel that "one of the single most important responsibilities" of the beneficiary's position would be to foster the company's "high-level business relations," a responsibility which in certain instances may be deemed to be managerial or executive in nature. See 9 FAM 41.54 N 8.2-1 (stating that for purposes of the L nonimmigrant classification, the statutory definitions of "managerial capacity" and "executive capacity" do not exclude such activities as customer and public relations, lobbying, and contracting).

Moreover, the organizational hierarchy maintained by the petitioner at the time of filing raises doubt as to whether the beneficiary would occupy a primarily managerial or executive position in the United States company. 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.

The AAO stresses that the instant analysis of the beneficiary's employment capacity is based on a review of the beneficiary's job duties and the petitioner's staffing levels at the time at which the immigrant visa petition was filed. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (stating that a petitioner must establish eligibility at the time of filing). In his October 14, 2005 letter, counsel challenged CIS' request for a copy of the petitioner's second quarter wage report, claiming it was overly burdensome. In fact, absent this information, the record would be devoid of evidence documenting the petitioner's staffing levels at the time of filing. See 8 C.F.R. § 204.5(j)(3)(ii) (allowing the director to request additional evidence in appropriate

circumstances). Prior to the director's request, the petitioner had offered only wage reports and payroll records pertaining the year 2004 and the first quarter of 2005.

Based on the petitioner's second quarter wage report for 2005, the petitioner employed seven workers in June, the month during which the petitioner filed the immigrant visa petition. The exact positions held by the workers are not clear from the record, as neither counsel nor the petitioner specifically acknowledged a discrepancy between the staffing levels originally noted by the petitioner and the information contained on the state quarterly wage report. Although counsel noted on appeal that the petitioning entity experienced personnel changes after filing the instant visa petition, he did not clarify for the record the staffing levels maintained by the petitioner in June 2005. 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).

As noted previously, the record suggests that the petitioner's marketing manager and one of its two marketing representatives were not employed at the time of filing. Again, it is not clear which of the remaining eight employees – the beneficiary as president, an accountant, a vice-president/chief executive officer, a purchasing manager, an international trade manager, two international marketing representatives, and a marketing representative – terminated employment with the petitioning entity during June 2005. Nonetheless, a review of the petitioner's business purpose and operations indicates that its reasonable needs would not be met through the employment of the previously named employees.

The petitioning entity was described as the international marketer of the foreign entity and the foreign entity's subsidiary companies¹, during which it would conduct market research, monitor resources, develop long and short-term marketing strategies for each company, and represent the companies at international trade shows. The petitioner noted in its June 9, 2005 letter that the United States company would also "spearhead" the foreign entity's "sales, financing, purchasing and logistical services." Furthermore, as a "secondary" function, the petitioner imports and distributes "industrial nutraceutical ingredients used in the global manufacture of nutritional supplements." Considering these many functions of the petitioning entity, particularly its role as the sole marketing channel for the foreign entity and its three subsidiaries, it does not appear that the beneficiary would occupy a primarily managerial or executive role in the petitioning entity while meeting the reasonable needs of the petitioning organization. In other words, the petitioner has not demonstrated that it employed a staff sufficient to perform its marketing, sales, purchasing, financing functions and the logistics of the overseas companies without the beneficiary's assistance in the performance of such non-managerial and non-executive functions as market research, customer relations, production and manufacturing, contract negotiations, and shipping.

While it appears from the evidence provided that the beneficiary would devote a portion of his time to performing managerial or executive job duties, the record, as a whole, does not contain sufficient documentation to establish that the beneficiary would be employed in a *primarily* managerial or executive capacity. As a result of the petitioner's failure to clarify the beneficiary's subordinate staff on the date of filing, together with evidence of the beneficiary's daily communications with vendors regarding product pricing, quantities, and deliveries, the AAO is not able to determine whether the beneficiary occupies a

¹ Based on an attached organizational chart of the foreign entity, the foreign corporation has three subsidiary companies that are operating as manufacturers of the foreign entity's products.

position that is primarily managerial or executive in nature. 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)). Accordingly, the appeal will be dismissed.

The AAO will next address the issue of whether the petitioner and the foreign entity enjoyed a qualifying relationship at the time of filing the immigrant visa petition.

To establish a qualifying relationship under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e. a United States entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." See generally § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); see also 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

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.

In its June 9, 2005 letter, the petitioner represented the United States company as a wholly-owned subsidiary of the beneficiary's foreign employer. As evidence of the purported parent-subsidiary relationship, the petitioner submitted a stock certificate issued by the petitioner on October 1, 1999, naming the foreign entity as the owner of 100,000 shares of the petitioner's stock and its years 2001 through 2003 federal income tax returns identifying the United States company as a subsidiary of the foreign entity. The petitioner also provided copies of wire transfer receipts identifying eleven transfers to the petitioner from the beneficiary and the petitioner's vice-president/chief executive officer during the month of September 1999 that amounted to \$99,835.

In his July 26, 2005 request for evidence, the director informed the petitioner that the wire transfer receipts, which identified the beneficiary as the originator of monies transferred to the petitioner, did not demonstrate that the foreign entity paid for the petitioner's issued stock. The director directed the petitioner to submit evidence in the form of wire transfer receipts and bank statements reflecting funds transferred from the foreign entity to the petitioner for its purported stock ownership in the petitioning entity. The director noted

that for transfers not originating with the foreign entity, the petitioner should identify the transferor and his or her relationship to the foreign entity, and explain the "reason for receiving such funds [from the foreign entity]." The director also requested copies of the petitioner's notice of transaction, the minutes of the company's meeting identifying its shareholders, and a stock ledger reflecting all stock certificates issued by the petitioner.

In his October 14, 2005 response, counsel stated that the wire transfer receipts previously provided by the petitioner documented the foreign entity's "capitalization" of the petitioning entity through transfers made by the foreign entity's president, the beneficiary. Counsel noted the beneficiary's position as a majority shareholder of the foreign entity, and explained:

[A]s [a] majority owner, [the beneficiary] frequently contributes his personal capital to further the development of [the foreign] company. The initial capitalization of [the petitioning entity] was a paid-in-capital expense for [the foreign entity] and is reflected accordingly in its balance sheet under previously submitted Exhibit 12. . . . This is a legitimate and normal business transaction thus ownership properly vests in [the foreign entity].

Counsel referenced the petitioner's minutes from an October 2, 1999 meeting, which identify the foreign entity as furnishing \$100,000 to the petitioner in exchange for its purported ownership of the organization's issued stock. An appended stock ledger also reflected an issuance of 100,000 shares of stock to the foreign entity in exchange for \$100,000.

In the January 4, 2006 decision, the director concluded that the petitioner had not established the existence of a qualifying relationship between the foreign and United States entities. Specifically, the director stated that the petitioner had failed to demonstrate that the foreign entity paid for its purported stock ownership. The director again referenced the wire transfer receipts identifying the beneficiary, rather than the foreign entity, as the originator of monies transferred to the petitioning entity. The director stated that the petitioner had failed to submit evidence clarifying the true ownership of the United States company. Consequently, the director denied the petition.

On appeal, counsel for the petitioner challenges CIS' rejection of the petitioner's claim that a parent-subsidiary relationship exists between the foreign and United States entities. Counsel states:

The initial capitalization of [the petitioning entity] is a paid-in contribution of [the foreign entity's] majority stock holder [sic]. While the funds came directly from [the beneficiary's] personal account, they do not diminish [the foreign entity's] ownership. The paid-in-capital contribution is duly noted in [the foreign entity's] financial records. [The foreign entity] is also the registered owner in the State of California. The stock ledger shows that the sole owner of [the petitioning entity] is [the foreign company]. Paid-in-capital is a specific accounting principal [sic] that recognizes such contributions by [the beneficiary] on behalf of the parent company. The CIS ignored the variety of evidence: stock records, tax returns, declarations on federal income tax returns, financial records of the parent company, [the beneficiary's] ownership of the parent company and incorrectly found the company was not owned by [the foreign entity] since the funds came from [the beneficiary's] personal account.

Counsel further contends that in the alternative, the foreign and United States entities should be viewed as enjoying an affiliate relationship, as the beneficiary would be considered the owner of the petitioning entity and has been established as the owner of the foreign entity.

Upon review, the petitioner has not established that 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, 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 petitioner has not reconciled the information contained in its stock certificate, stock transfer ledger, and corporate minutes, all of which suggest that the foreign entity is the sole owner of the United States company, with the fact that the stock was purchased by the beneficiary with funds from his personal bank account. As addressed above, in determining the ownership of an organization, CIS may consider factors other than the corporation's stock certificate, stock transfer ledger or corporate documents. The means by which the stock was purchased is particularly relevant in cases such as the present, where a discrepancy exists between the owner represented on the corporate documentation and the transferor of the monies used to purchase the stock.

The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. Counsel's claim that the funds transferred to the petitioner

from the beneficiary's personal bank account constituted a "paid-in-capital contribution" to the foreign entity does not resolve the noted inconsistencies in the petitioner's ownership. Counsel referenced the foreign entity's balance sheet submitted by the petitioner with its initial filing as evidence of the legitimacy of the transaction. The AAO notes that the referenced balance sheet is for the year 2004, while the transfers purportedly occurred five years earlier in September 1999. In order to corroborate counsel's argument, it is necessary that the petitioner submit documentation relevant to the appropriate period in question, such as the foreign entity's 1999 balance sheet and acknowledgement of the beneficiary's purported contribution in the year 1999 to the foreign entity's capital account. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The record as presently constituted suggests that the beneficiary personally paid for the stock issued by the petitioner. Absent relevant documentary evidence, the AAO cannot conclude that the foreign entity furnished monies in exchange for its purported interest in the petitioning entity.

Counsel's alternative argument, that the foreign and United States organizations be deemed affiliates, cannot be inferred from the record. The AAO acknowledges the beneficiary as a majority shareholder of the foreign entity. However, as already discussed above, the current record does not contain concrete independent objective evidence clarifying the petitioner's ownership. Furthermore, a corporation is a separate and distinct legal entity from its owners or stockholders. *See Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). The petitioner cannot merely suggest the beneficiary's ownership of the petitioning entity without resolving the apparent discrepancies regarding the company's ownership contained in the petitioner's corporate documentation, nor can the petitioner simultaneously claim to be owned by the beneficiary and by the foreign entity. Again, 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. at 591-92.

Based on the foregoing discussion, the petitioner has failed to demonstrate the existence of a qualifying relationship between the foreign and United States entities. Accordingly, the appeal will be dismissed.

Counsel emphasizes on appeal CIS' prior approval of three L-1A nonimmigrant petitions filed by the petitioner on behalf of the beneficiary. It should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant 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.

In addition, unless a petition seeks extension of a "new office" petition, the regulations allow for the approval of an L-1 extension without any supporting evidence and CIS normally accords the petitions a less substantial

review. *See* 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). Because CIS spends less time reviewing L-1 petitions than Form I-140 immigrant petitions, some nonimmigrant L-1 petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003).

Moreover, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The prior nonimmigrant approvals do not preclude CIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Counsel's reference on appeal to a July 28, 2005 CIS memorandum addressing matters involving the extension of a nonimmigrant petition is not relevant to the adjudication of the instant immigrant visa petition. The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Due to the lack of required evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approvals by denying the present immigrant petition.

Finally, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.