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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

By

[Redacted]

FILE: [Redacted]
LIN 06 184 50757

Office: NEBRASKA SERVICE CENTER

Date: NOV 03 2008

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 preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a New Jersey corporation which claims to be a food importer having a qualifying relationship with the beneficiary's claimed employer in Turkey. 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.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be or has been employed in a primarily managerial or executive capacity.

On appeal, counsel disputes the director's findings, asserts that the beneficiary will perform, and has performed, primarily qualifying duties, and submits a brief and additional evidence in support of her arguments.

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 a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who 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.

Title 8 C.F.R. § 204.5(j)(3) explains that a petition filed for a multinational executive or manager under section 203(b)(1)(C) must be accompanied by a statement from an authorized official of the "petitioning United States employer" which demonstrates that:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year

The first issue in this proceeding is whether the petitioner provided sufficient evidence to establish that it will employ the beneficiary 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) 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.

The petitioner does not clarify in the initial petition whether the beneficiary will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing 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.

The petitioner described the beneficiary's proposed job duties as "vice president operations" in the Form I-140 as follows:

The Beneficiary shall further be responsible [for the] day[-]to[-]day business activities of the US Company. The Beneficiary shall assume the responsibility of the policy planning and the goal establishment of the US Company.

The petitioner also claims in the Form I-140 to employ four workers.

On March 1, 2007, the director requested additional evidence. The director requested, *inter alia*, a detailed description of the beneficiary's proposed duties in the United States "including the percentage of time the beneficiary will spend performing each duty, and the amount of time spent supervising/managing subordinates." The director also requested descriptions of the duties and educational degrees of all workers

to be supervised by the beneficiary and an organizational chart showing the beneficiary's position in relation to other workers.

In response, the petitioner submitted a letter dated May 22, 2007 in which it describes the beneficiary's duties abroad and in the United States as follows:

As Vice President of Operations the Beneficiary is responsible for insuring that all of our trade from Turkey enters the United States without any flaws. The Beneficiary is responsible for the day[-]to[-]day business activities of our Company. The Beneficiary supervises and controls the work of all other employees, the Beneficiary does not have an immediate supervisor he continues to answer to the owner of the Company. The Beneficiary is responsible for the company's policy planning and our goal establishments. The Beneficiary has authority to hire and fire and take care of employee's personnel actions such as promotions, leave of absence and vacations.

Our Parent Company's facility and manufacturing facility in Turkey has some of the finest and modern state of the art equipment, inventory, and packaging supplies. The Beneficiary understands our Parent Company's structure and has intimate knowledge of our Parent Company's operations. The Beneficiary has continued to ensure our company's success. Furthermore, the Beneficiary understands the freight forwarding and the importing of foods into the United States and as such we will be dependent upon his unique services. The Beneficiary will continue to direct the management.

The petitioner did not submit organizational charts, describe the duties of the beneficiary's subordinates, if any, or explain how much time the beneficiary devotes to each of the ascribed duties.

On July 26, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

On appeal, counsel asserts that the director erred and that the beneficiary will primarily perform qualifying duties. Counsel submitted a brief and additional evidence, including a job description for the beneficiary's proffered position.

Upon review, counsel's assertions are not persuasive in establishing that the beneficiary will be employed in a primarily managerial or executive capacity.

As a threshold issue, it is noted that counsel's attempt on appeal to supplement the record with a more detailed job description for the beneficiary was inappropriate and will not be considered by the AAO. As noted above, the director specifically requested a more detailed job description for the beneficiary in the Request for Evidence. Accordingly, as the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19

I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

In examining the executive or managerial capacity of the beneficiary, Citizenship and Immigration Services (CIS) will look first to the petitioner's description of the job duties. See 8 C.F.R. § 204.5(j)(5). The actual duties themselves 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).

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis and, consequently, fails to establish that the beneficiary will "primarily" perform qualifying duties. For example, the petitioner states that the beneficiary will supervise and control other employees, be responsible for planning policies and establishing goals, and "take care of" personnel actions. However, the petitioner fails to specifically describe these goals and policies or explain, what, exactly the beneficiary will do to supervise and control the subordinate workers. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive duties. 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.* Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner also failed to submit a breakdown of the number of hours devoted to each of the beneficiary's vaguely described duties, to describe the duties of the subordinate workers purportedly supervised and controlled by the beneficiary, or to provide a copy of an organizational chart, even though the director requested all of this evidence. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Although the petitioner claims that it employs a total of four workers, the petitioner has not established that any of these claimed employees will relieve the beneficiary of the need to perform non-qualifying tasks. Consequently, the record is not persuasive in establishing that the beneficiary will "primarily" perform qualifying duties. On the contrary, it appears more likely than not that the beneficiary will primarily perform non-qualifying administrative or operational tasks. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).¹

¹Although the AAO will not consider the beneficiary's job description submitted on appeal, it is nevertheless noted that this job description appears to be equally non-specific and vague, and thus it would not be persuasive in establishing that the beneficiary will primarily perform qualifying duties even if it were considered by the AAO. It is further noted that the petitioner did not submit any of the other requested evidence pertaining to the beneficiary's proffered position on appeal, e.g., a breakdown of the number of

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As noted above, the petitioner failed to specifically describe the duties or educational backgrounds of the four workers claimed in the Form I-140 even though this evidence was requested by the director. It has also not established that any of these workers is currently employed and, if so, whether any are truly supervised and controlled by the beneficiary. Once again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Therefore, it appears that the beneficiary will be, at most, a first-line supervisor of non-professional workers. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. § 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, as the petitioner failed to establish the skills or educational backgrounds required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.² Accordingly, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.³

hours devoted to each of the beneficiary's vaguely described duties, a description of the duties of the subordinate workers purportedly supervised and controlled by the beneficiary, or a copy of an organizational chart.

²In evaluating whether the beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

³While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary will manage an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 204.5(j)(2). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the tasks related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. The beneficiary's job description is so vague that it cannot be discerned what, exactly, the beneficiary will do on a day-to-day basis. As explained above, it appears more likely than not that the beneficiary will primarily perform the tasks necessary to produce a product or to provide a service and will at most act as a first-line supervisor of non-professional workers. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991)); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.

The second issue in the present matter is whether the petitioner has established that the beneficiary was employed abroad in a primarily managerial or executive position.

description fails to document that the beneficiary's duties will be primarily managerial. Also, as explained above, the record indicates that the beneficiary will more likely than not primarily perform non-qualifying tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties will be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

As the petitioner failed to specifically describe the beneficiary's duties abroad in the evidence submitted with the Form I-140, the director requested additional evidence. The director requested, *inter alia*, a detailed description of the beneficiary's duties abroad including the percentage of time the beneficiary spent performing each duty and the amount of time spent supervising/managing subordinates. The director also requested descriptions of the duties and educational degrees of all workers supervised abroad by the beneficiary and an organizational chart showing the beneficiary's position in relation to other workers.

In response, the petitioner submitted the letter dated May 22, 2007 in which it further describes the beneficiary's job duties abroad. As this job description is reproduced *supra*, it will not be repeated here. It is noted that the petitioner did not submit organizational charts, describe the duties of the beneficiary's subordinates, if any, or explain how much time the beneficiary devoted to each of the ascribed duties.

On July 26, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity.

On appeal, counsel asserts that the director erred and that the beneficiary primarily performed qualifying duties. Counsel submitted a brief and additional evidence, including a job description for the beneficiary's foreign position.

Upon review, counsel's assertions are not persuasive in establishing that the beneficiary was employed in a primarily managerial or executive capacity.

Once again, and as a threshold issue, it is noted that counsel's attempt on appeal to supplement the record with a more detailed job description for the beneficiary was inappropriate and will not be considered by the AAO. As noted above, the director specifically requested a more detailed job description for the beneficiary in the Request for Evidence. Accordingly, as the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764; *Matter of Obaigbena*, 19 I&N Dec. 533. The appeal will be adjudicated based on the record of proceeding before the director.

As explained above, in examining the executive or managerial capacity of the beneficiary, CIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. At 1108, *aff'd*, 905 F.2d 41.

In this matter, the petitioner's description of the beneficiary's job duties abroad fails to establish that the beneficiary acted in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary did on a day-to-day basis and, consequently, fails to establish that the beneficiary "primarily" performed qualifying duties. For example, the petitioner states that the beneficiary supervised and controlled other employees, was responsible for planning policies and establishing goals, and administered personnel actions. However, the petitioner fails to specifically describe these goals and policies or explain, what, exactly the beneficiary did to supervise and control the subordinate workers. 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.* Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Similar to the United States position, the petitioner also failed to submit a breakdown of the number of hours devoted to each of the beneficiary's vaguely described duties, to describe the duties of the subordinate workers purportedly supervised and controlled by the beneficiary, or to provide a copy of an organizational chart, even though the director requested all of this evidence. Once again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Consequently, the record is not persuasive in establishing that the beneficiary "primarily" performed qualifying duties. An employee who "primarily" performed the tasks necessary to produce a product or to provide services is not considered to have been "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.⁴

The petitioner has also failed to establish that the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees, or managed an essential function of the organization. As noted above, the petitioner failed to specifically describe the duties or educational backgrounds of any foreign workers. It has also not established that any other workers were actually employed and, if so, whether any were truly supervised and controlled by the beneficiary. Once again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Similarly, the petitioner has failed to establish that the beneficiary acted in an "executive" capacity. The beneficiary's job description is so vague that it cannot be discerned what, exactly, the beneficiary did on a day-to-day basis. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

Accordingly, the petitioner has failed to establish that the beneficiary primarily performed managerial or executive duties abroad, and the petition may not be approved for that reason.

Beyond the decision of the director, the petitioner has also failed to establish that it is an "affiliate or

⁴Although the AAO will not consider the beneficiary's foreign job description submitted on appeal, it is nevertheless noted that this job description appears to be equally non-specific and vague, and thus it would not be persuasive in establishing that the beneficiary primarily performed qualifying duties even if it were considered by the AAO. It is further noted that the petitioner did not submit any of the other requested evidence pertaining to the beneficiary's proffered position on appeal, e.g., a breakdown of the number of hours devoted to each of the beneficiary's vaguely described duties, a description of the duties of the 150 subordinate workers purportedly supervised and controlled, directly or indirectly, by the beneficiary, or a copy of an organizational chart.

subsidiary" of the foreign employer in Turkey.

A "subsidiary" is defined at 8 C.F.R. § 204.5(j)(2) as:

[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.

Likewise, an "affiliate" is defined in pertinent part at 8 C.F.R. § 204.5(j)(2) as:

- (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[.]

The regulations 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 Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); see also *Matter of Church Scientology International*, 19 I&N Dec. 593. In the context of this 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 at 595.

In this matter, the petitioner asserts that it has a qualifying relationship with the foreign employer. However, even though the director requested additional evidence establishing that the petitioner and the foreign employer are qualifying organizations, the record is devoid of evidence establishing that the entities share common ownership and control. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Although the petitioner submitted tax returns which indicate that it is 71% owned by [REDACTED] and 29% owned by the beneficiary, the record is devoid of evidence establishing the ownership and control of the foreign employer other than an uncorroborated claim on appeal that there are three shareholders of the foreign employer. However, the identities and corresponding interests of each of these shareholders have not been established.

Accordingly, it cannot be discerned whether the two entities are qualifying organizations, and the petition may not be approved 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). Therefore, based on the additional ground of ineligibility as discussed above, this petition cannot be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.