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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass., 3/F
425 I Street N.W.
Washington, D.C. 20536



File: WAC 00 121 53035 Office: CALIFORNIA SERVICE CENTER Date: **DEC 9 - 2003**

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a U.S. company that imports items from Hong Kong and distributes them to U.S. buyers. The petitioner seeks to temporarily employ the beneficiary as the General Manager of the U.S. company. The director determined that the beneficiary will not be employed in a primarily managerial or executive capacity, and that the petitioner had failed to establish that a qualifying relationship exists.

On appeal, counsel asserts that the beneficiary will manage the import function of the U.S. organization and as such is a functional manager. Counsel also submits additional documentation on the U.S. company's contract employees.

To establish L-1 eligibility under § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. § 214.2 (1)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment

qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

(v) If the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The petitioner, [REDACTED], is a U.S. company incorporated in the State of California on August 10, 1999. The petitioner filed the I-129 petition on March 20, 2000. The foreign entity is [REDACTED] a sole proprietorship, established in Hong Kong in 1994. On August 17, 1999, 1,000 shares of the U.S. company were issued to [REDACTED] the owner of the Hong Kong sole proprietorship and president of the U.S. company. The petition indicates that no other shares were issued. The Hong Kong company is an exporter and distributor of stationary goods, crafts, toys, gifts, ceramics and wooden items, and season items manufactured in Hong Kong. The company sells goods to distributors

and wholesalers in Europe (40%), United States (50%), Canada (5%), and others (5%).

The first issue in this proceeding is whether the petitioner has established that the beneficiary was employed in a primarily managerial or executive capacity by the overseas parent company and whether the petitioner will employ the beneficiary in a managerial capacity in the United States.

8 C.F.R. § 214.2(1)(1)(ii) states:

(B) *Managerial capacity* means an assignment within an organization in which the employee primarily:

(1) Manages the organization, or a department, subdivision, function, or component of the organization;

(2) 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;

(3) 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

(4) 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.

8 C.F.R. § 214.2(1)(1)(ii) also states the following:

(C) *Executive capacity* means an assignment within an organization in which the employee primarily:

(1) Directs the management of the organization or a major component or function of the organization;

(2) Establishes the goals and policies of the organization, component, or function;

(3) Exercises wide latitude in discretionary decision-making; and

(4) Receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

With regard to the beneficiary's duties in Hong Kong, in the original petition, the petitioner stated: "General Manager: Supervised Sales Manager, Shipping Supervisor. Responsible for negotiating contracts with purchasers, assuring that contracts were met as agreed upon." With regard to future duties in the United States, the petitioner stated: "General Manager: Oversee the establishment and growth of the company. Amend and formulate policies, establish methods for marketing. Negotiate contacts, hire/fire personnel." The beneficiary was also described as having a Bachelor's degree in accounting from the University of San Carlos in the Philippines.

An accompanying letter stated the following with regard to the beneficiary's previous duties with the Hong Kong company and future duties with the U.S. company:

[The beneficiary] has been employed with our company in Hong Kong since September 1997 in the capacity of General Manager. Ms. [REDACTED] is responsible for supervised [sic] seven employees and managers in the marketing and sales department in addition to the purchasing department. [The beneficiary] has been provided with full autonomy in this position and is responsible only to the Owner. She has been responsible for the escalation of the export activities, and has full authority to negotiate contracts on our behalf.

In view of the increase in the volume of business, we find it vitally important to transfer [the beneficiary] from [REDACTED] to become the General Manager for a temporary period of approximately one year. In her capacity of General manager she will be responsible for ensuring the establishment and growth of the business, amending and formulating policies, establishing methods for managing staff members such as the marketing manager. [The beneficiary] will be responsible for the escalation of import activities, and has full authority to negotiate contracts on our behalf. She will have the authority to recommend personnel actions, such as hiring, firing and promoting of the employees. [The beneficiary] will exercise a wide latitude of discretionary decision-making powers, receiving general direction only from the President. She will report directly to the President, providing her with monthly evaluation and recommendations. [The

beneficiary's] knowledge of the company operations and familiarity with our operations are invaluable.

The petitioner also submitted a copy of the beneficiary's I-94, and a copy of a Bachelor of Science in Commerce (B.S.C.-Accounting) diploma from the University of San Carlos, in Cebu City, the Philippines, for [REDACTED]. Also enclosed were articles of incorporation and a share certificate for the U.S. company, as well as a letter from a U.S. bank stating an account balance, and a lease agreement for the U.S. company's business site. With regard to the Hong Kong company, the petitioner submitted a business license stating that the company is a sole proprietorship, a company brochure, invoices for products sold by the Hong Kong company, a bank statement for September 1999, and a 1998/1999 profit and loss statement.

On May 15, 2000, the director, in part, requested the following information regarding the beneficiary's position:

Documents Pertaining to the Foreign Company:

Employment Abroad: Copies of the foreign company's payroll records for the beneficiary for the year preceding the filing of the first petition for L-1 status. Specify when the beneficiary was hired, the positions that were held and why the beneficiary was selected for the positions with the U.S. entity.

New Office-First Year: submit an original letter on company letterhead from the foreign company explaining the need for the new office in the United States indicate the number of employees and types of positions they will hold, the amount of the U.S. investment; the financial ability of the foreign company to pay the beneficiary and commence doing business in the U.S. and the size and staffing level of the foreign company. Explanation of how the proposed business venture will, within one year, support a managerial or executive capacity position. Submit evidence that sufficient physical premises have been secured. Indicate the total number of I-129 petitions that have been filed for employees to come and open the new office.

With regard to managerial or executive: Submit a copy of the foreign company's line and block organizational chart describing its managerial hierarchy and staffing levels. The chart should include current names of all

¹ No clarification is provided in the record to explain whether [REDACTED] and [REDACTED] are the same individual. Although [REDACTED] is not named as an employee of the U.S. company, her signature is found on numerous invoices for the U.S. company. For purposes of this review, the AAO considers [REDACTED] and [REDACTED] to be the same individual.

executives, managers, supervisors, and number of employees within each department or subdivision. Clearly identify the beneficiary's position in the chart and list employees under the beneficiary's supervision by name and job title. Include a brief description of job duties, educational level and annual salaries for all employees under the beneficiary's supervision.

Submit a more detailed description of the beneficiary's duties abroad. Be specific. Indicate exactly who the beneficiary directs including their job title and position description. List all employees under the beneficiary's direction. Indicate the percentage of time the beneficiary spends in each of the listed duties.

Documents Pertaining to the U.S. Business:

Manager or Executive: Submit copy of the U.S. company's line and block organizational chart describing its managerial hierarchy and staffing levels. The chart should include the current names of all executives, managers, supervisors, and number of employees within each department or subdivision. Clearly identify the beneficiary's position in the chart and list all employees under the beneficiary's supervision by name and job title. Also include a brief description of job duties, educational level, annual salaries/wages and immigration status for all employees under the beneficiary's supervision. Finally explain the source of remuneration of all employees and explain if the employees are on salary, wage, or paid by commission.

Submit copies of the California Employment Development Department (EDD) Form DE-6 Quarterly Wage Reports for all employees for the last _____ [sic] quarters that were accepted by the State of California. Submit Federal Form 941 Quarterly Wage Reports for all employees for the last _____ [sic] quarters, along with a payroll summary with copies of the U.S. company's W-2's and W-3's evidencing wages paid to employees.

In response to the request for further evidence, on August 1, 2000, counsel submitted further documentation. Among other documents, the petitioner submitted a document from the Hong Kong company entitled "Employees File" that listed six employees. They were: the beneficiary, general manager; [REDACTED] the sales manager; [REDACTED] identified as JPN Secretary; [REDACTED] a shipping clerk; [REDACTED] identified as Inspector, Sourcing; and [REDACTED] receptionist. This list indicates the educational level of the employees as well as their yearly or monthly salary. The beneficiary is listed as having a Bachelor of

Science in Commerce, while the education of the remaining employees is listed as "Form 5" or "Form 7."

[REDACTED] and [REDACTED] were all identified as being employees for some 3 months. Employer's Returns for Remuneration and Pensions Records, a Hong Kong form, were submitted for the beneficiary, for [REDACTED] and [REDACTED]. No other documentation on the employees' specific duties or the time spent by the beneficiary with her subordinate employees was submitted.

With regard to the beneficiary, the petitioner reiterated the information provided on the original petition and added:

[The beneficiary] has been responsible for the escalation of the export activities, and has full authority to negotiate contracts on our behalf. She had more experience in USA market and good relationship with big customers specially in crafts and stationary products.[sic] With her excellent performances, we had appointed her to manage [REDACTED]

The organizational chart for the U.S. company showed [REDACTED] as the CEO and President of [REDACTED] the beneficiary, as General Manager and Corporate Secretary, and [REDACTED] as Purchasing Coordinator. Three salesmen, [REDACTED] and [REDACTED] were also on the organizational chart. Their salaries were indicated as based on commissions. Finally, [REDACTED] CPA, was identified as an accountant in charge of payroll and bookkeeping. She was paid on a case-to-case basis. The petitioner submitted W-2 and W-3 forms for 1999 as well as Forms 941 for the final quarter of 1999 and the first quarter of 2000 only for Juneven Tolentino.

The president and general manager were identified as having university degrees while Juneven Tolentino was identified as an undergraduate in electronics engineering. Photographs for both companies were submitted, as well as numerous invoices for sales of goods by the U.S. company.

On June 8, 2001, the director determined that the petitioner had not established that the beneficiary would be performing primarily in an executive or managerial capacity, primarily basing the decision on the fact that there is no evidence of employees in the U.S. company, or of financial resources to prove the petitioner was a bona fide business entity. In addition, the director stated that there is no justification that the beneficiary's functions as a General Manager are needed at this point. The director noted that the 1999 Corporate Tax Returns show that the petitioner's business transactions are minimal and at a loss. In addition, the director noted that there is already one executive position filled by the president of the U.S. entity, stating that "there is no need or justification for two managerial or executive positions to establish and operate a newly formed company in the first year of

its operation without documentary evidence that other employees exist."

On appeal, counsel asserts that the beneficiary is a functional manager and the status does not limit managers and executives to persons who supervise a large number of persons or a large enterprise. Counsel stated that the beneficiary manages an essential function within the company in that she personally manages the import function of Faithmark Corporation. She also supervises and controls the work of the company warehouse manager and purchasing and warehouse coordinator as well as the work of four independent contractors. She functions at a senior level within the organizational hierarchy and with respect to the function managed because she is solely responsible for negotiating contracts and establishing policies to further the growth of the company's import business. Counsel further asserts that there are two employees and four independent contractors that the beneficiary oversees. Counsel mentions several unpublished AAO decisions that have sustained appeals and granted preference visa petitions on the basis of the "functional manager" concept.

With regard to having two executive/managers at a new company, counsel asserts that the president of the U.S. company is also the president of the foreign company and must split her time between the two companies. In addition, both positions of president and general manager are necessary for the U.S. company as they have different functions. Counsel states that the beneficiary would oversee the import function and is solely responsible for business activities between the U.S. company and U.S. clients, while the president of the U.S. company is responsible for dealings between the U.S. and foreign corporations. For further clarification, counsel asserts that the president establishes overall policies for the company while the general manager makes decisions that affect the import aspect of the business.

In addition, counsel submits additional documentation, namely, a new organizational chart of the U.S. company that names Teresa Chu as warehouse manager and an income statement for the U.S. company for the year ending in May 31, 2001 that shows an income of \$64,557.36. The petitioner also enclosed IRS Form 941 Employer's Quarterly Federal Tax Return for the first quarter of the year 2001 for [REDACTED] as well as earlier IRS Forms 941 for [REDACTED]. Furthermore, counsel submits copies of four agreements made between the U.S. company and four independent contractors to actively promote the sale of the U.S. company's products. The agreements signed by [REDACTED] and [REDACTED] are dated prior to the filing of the instant petition. The agreement for [REDACTED] is dated June 12, 2000, and the agreement for [REDACTED] is dated March 21, 2001.

Upon review of the file and materials submitted in support of the instant petition, it should be noted that only evidence submitted with regard to the petitioner's eligibility at the time of filing of the original petition will be considered for purposes of this

appeal. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978)

With regard to the instant petition, the original petition was received by the Service Center on March 20, 2000. Thus, the employment record of Teresa Chu for the U.S. company which occurred after the filing of the instant petition, and the sales agreements signed by independent contractors after the filing of the instant petition will not be considered in this decision. Furthermore, the incorporation of the foreign entity in Hong Kong in December 2000 will not be considered in this appeal.

Upon review of the petition and file materials, the petitioner has not established that the beneficiary has been or will be primarily performing at an executive or managerial level in the U.S. company.

With regard to the beneficiary's employment abroad with the foreign entity, the record shows that the petitioner established the beneficiary's requisite one year of employment abroad with the foreign entity. Nevertheless the record is not persuasive as to whether the beneficiary performed at a managerial or executive level while employed in Hong Kong. First, the petitioner has not submitted a comprehensive description of the beneficiary's duties in Hong Kong. The information provided to date is vague and does not clarify what the beneficiary did on a day-to-day basis. Furthermore, the employees supervised by the beneficiary all appear to be non-professional employees. The record indicates that all subordinate employees were graduates of "Form 5" or "Form 7" within the Hong Kong educational system. Both Forms appear to be part of the secondary school system in Hong Kong. A first-line supervisor of non-professional employees would not be considered as working at a managerial level for purposes of the L-1 visa classification. No other documentation on the employees' specific duties or the time spent by the beneficiary with her subordinate employees was submitted to establish her managerial or executive level work.

With regard to the beneficiary's managerial or executive work with the U.S. company, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive position. Again, the petitioner has submitted a vague and broadly cast description of the beneficiary's duties. Furthermore, the record indicates that at the time of the filing of the original petition, the U.S. company had one full-time non-professional employee, along with signed contracts for [REDACTED] and [REDACTED] as sales representatives. The independent accountant is not employed on a permanent full-time basis and appears to have begun the actual work and billing in August 2000, following the submission of the instant petition. Based on Hong Kong tax forms, the beneficiary appears to have been paid by the Hong Kong company prior to the filing of the petition, while the

president and owner of the Hong Kong company appears to have provided services to the U.S. company without remuneration during the period of time prior to the filing of the instant petition, based on company documents.

Neither the management hierarchy as outlined on the first organizational chart nor the documentation provided to date with regard to the professional credentials of the present staff or contractors appear to support the claim that the beneficiary would be supervising a professional staff. The beneficiary appears to be a first-line supervisor of non-professional staff, with some authority and supervision of non-professional contractors.

With regard to counsel's assertion that the beneficiary will serve as a functional manager, the record does not contain a comprehensive description of the beneficiary's duties as the manager of the import function of the U.S. company. As stated previously, the record does not reflect that the beneficiary will be primarily supervising a subordinate staff of professional, managerial or supervisory personnel who relieve the beneficiary from performing non-qualifying duties.

With regard to actual duties, the beneficiary appears to have signed numerous invoices for the U.S. company using the name Rosaline Uy. While the record establishes that the beneficiary has authority to sign invoices for the U.S. company, this activity will not necessarily establish that she has been primarily performing at an executive or managerial level. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

On review, as required by 8 C.F.R. § 214.2(l)(1)(ii)(B) and (C), the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The descriptions of the beneficiary's duties as provided in the original petition and in response to the director's request for additional information are vague and therefore do not clarify what the beneficiary actually does on a daily basis. The beneficiary did not supervise a professional staff in the Hong Kong office, nor does it appear that she will be supervising a staff of managerial, supervisory, or professional staff in the U.S. company who would relieve her of non-qualifying duties. The one non-professional staff member and the two contractors and contract accountant do not appear to provide a sufficient management hierarchy that would establish that the beneficiary would function at a senior level of the U.S. organization. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of

professional, managerial, or supervisory personnel, or primarily managing an essential function within the organization. Based on the evidence submitted, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

The second issue in this proceeding is whether the petitioner has established a qualifying relationship.

8 C.F.R. § 214.2 (1)(ii) provides that:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

(H) *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *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.

(L) *Affiliate* means

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

(2) 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

Although the I-129 petition identifies the petitioner as an affiliate and a branch of the foreign company, it also identifies the foreign entity as a sole proprietorship. The director requested further documentation on the nature of the qualifying relationship between the foreign company and the U.S. company. In particular, documents on the foreign company's corporate structure were requested, along with evidence that the foreign parent company had, in fact, paid for the U.S. entity. The director requested items such as copies of original wire transfers, cancelled checks, or deposit receipts detailing monetary amounts for the stock purchase.

In response, the petitioner stated that the Hong Kong company was a sole proprietorship and had no annual report. The petitioner resubmitted the Business Certification form from the Hong Kong government that listed the Hong Kong company as a sole proprietorship. With regard to the U.S. company, the petitioner resubmitted the stock certificate previously submitted with the original petition, along with the a copy of the back of the stock certificate and a stock ledger that indicated the 1,000 shares of stock had been issued to the owner of the Hong Kong sole proprietorship for \$1,000. Copies of wire transfers of monies from the Hong Kong company to the U.S. company were submitted, along with an explanation of the initial capitalization of the U.S. company by way of hand-carried funds, wire transfers, and in kind purchases of equipment and supplies by the Hong Kong company president. The petitioner submitted a letter that listed various monetary contributions totaling \$56,240 U.S. dollars. The petitioner also stated that some \$101,528.18 had been invested in the U.S. company.

The petitioner also submitted the articles of incorporation for the U.S. company and a document entitled "Written Consent of Director." This latter document indicated that the owner of the foreign company was named director of the U.S. company and that she purchased 1,000 shares of the U.S. company for \$1,000.

Upon review of this documentation, the director denied the petition, stating in part that the director had requested evidence of business relationship that the U.S. company and the foreign business entity are "the one and the same corporation, or that they are linked in an affiliate relationship with common

management and ownership." The director considered the evidence submitted with regard to the ownership of the sole proprietor Hong Kong company and the U.S. company by Ho Lien Huang to be unclear.

Upon appeal, counsel submits additional documents with regard to the U.S. company's incorporation and tax status in the United States, as well as articles of incorporation for the Hong Kong company dated December 2000.

Upon review of the record with regard to the issue of the ownership and control of the U.S. company, the record is unpersuasive. Although the petitioner submitted copies of wire transfers, a stock certificate, a ledger, and substantial documentation on the capitalization of the U.S. company, there is no evidence on the record to document the actual purchase of the 1,000 shares of the U.S. company by the owner of the Hong Kong sole proprietorship. The bank deposit receipts and wire transfers do not reflect any such payment by the Hong Kong sole proprietor to the U.S. company, but instead reflect payments to third parties. The claim that funds were hand carried to the United States is unsupported by U.S. Customs declarations or any other documentary evidence. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

While the petitioner did submit sufficient documentation on the capitalization of the U.S. company, the petitioner did not submit sufficient evidence with regard to the ownership and control of both the sole proprietorship and the U.S. company subsidiary. A qualifying relationship is not found to have been established for purposes of the L-1 eligibility.

With regard to the Director's comments on the U.S. company's ability to justify an additional executive or managerial level position, these comments do not appear to be relevant to this particular adjudication. The only manager/executive position presently under consideration is that of the beneficiary. Based on the tax documentation and bank statements submitted by the Hong Kong company, the foreign entity appears able to continue to remunerate the beneficiary for her work and has provided sufficient financial resources to begin doing business in the United States.

It should also be noted that the U.S. company in question was incorporated in the State of California some six months prior to the submission of the instant petition. To the extent that the petition is for a new office and not an extension of an existing office, the fact that the business operated at a loss for the first six months of its existence is not necessarily a dispositive issue. The critical issue raised by the regulations is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. See 8 C.F.R. § 212.4(l)(v)(C).

In conclusion, the petitioner appears to have overcome some of the issues raised in the director's final decision with regard to the legal status of the foreign entity and the funds provided to the U.S. company to conduct business. Nevertheless, as required by 8 C.F.R. § 214.2(1)(1)(ii)(G), the record to date remains insufficient with regard to whether a qualifying relationship has been established based on the actual purchase of stock shares by the foreign entity. In sum, for this reason, and for the issue previously discussed, the petition may not be approved.

According to counsel, the petitioner submitted a subsequent petition for L-1 classification, which was approved at the California Service Center. The director may choose to take this decision under advisement as to whether to reopen and possibly revoke the second petition.

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, the burden has not been met.

ORDER: The appeal is dismissed.