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U.S. Department of Homeland Security  
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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

MAR 12 2004

FILE: EAC 02 188 51576 Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:  
Beneficiary:

MAR 12 2004

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)

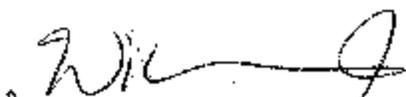
ON BEHALF OF PETITIONER:

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prevent clearly unwarranted  
invasion of personal privacy**

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a new office engaged in the sale of hardwood furniture manufactured in Thailand. The petitioner seeks to employ the beneficiary as its marketing manager for three years, and filed a petition requesting the beneficiary be granted temporary L-1A status.

The director denied the petition concluding that the petitioner had failed to establish the following: (1) that the petitioner, as a new office, obtained sufficient physical premises to house the new U.S. business; (2) that the beneficiary had been employed abroad for at least one continuous year within the last three years as a manager or executive; (3) that the United States operation would support a managerial or executive position within one year of the approval of the petition; and, (4) that the size of the U.S. investment is sufficient to pay the beneficiary's salary of \$40,000 and to commence doing business in the United States.

On appeal, the petitioner's counsel asserts that as a new entity, the petitioner should not be subject to rigorous scrutiny. Rather, counsel contends that the petitioner should be given "the benefit of the doubt" that it has met its burden, as outlined in the regulations. Counsel submits a brief and additional evidence in support of his assertions.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further states if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or 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;
- (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 (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - a. the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

- b. 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
- c. the organizational structure of the foreign entity.

The first issue in this proceeding is whether the petitioner has secured sufficient physical premises to house the new U.S. office.

In support of the original petition, the petitioner submitted a copy of an unsigned lease in which the petitioner was identified as the tenant of the premises, which were not specified in the document, for a term of three years, beginning on February 1, 2002. The first paragraph indicated that the unspecified apartment "must be used only as a private Apartment to live in and for no other reason. Only a party signing this Lease and the spouse and children of that party may use the Apartment." The petitioner did not provide any further identification of the premises except to include the company's address on the I-129 petition.

In a request for additional evidence, the director noted that although a copy of an apartment lease was submitted, the petitioner failed to explain how it would conduct business from a residential dwelling. Therefore, the director requested that the petitioner provide evidence that it has secured premises of a sufficient size to conduct the storage and sale of furniture. The evidence was to include lease agreements, a statement from the lessor identifying the square footage of the leased premises, and the telephone numbers of the lessor.

In response, the petitioner submitted a statement signed by the lessor in which he indicated that the petitioner rents a warehouse and showroom space, approximately 4,700 square feet, located at

The petitioner also identified this address on the petition as its place of business. The petitioner did not submit a revised lease that allowed for the use of the apartment as a warehouse and showroom. Six pictures were submitted by the petitioner as evidence of the secured office space.

In his decision, the director determined that the petitioner had not secured sufficient premises to house the new office. The director addressed the inconsistency of the proposed use of the premises in the lease agreement and the lessor's letter. The director again noted that the lease agreement provided for the rented space to be used only as a private residence. In addition, the petitioner failed to submit a revised lease agreement allowing for the leased premises to be used for business purposes. As such, the director concluded that the petitioner had failed to demonstrate that adequate premises had been secured for the U.S. business.

On appeal, counsel asserts that the director disregarded the lessor's signed written statement and the pictures submitted by the petitioner in its response to the director's request for evidence.

On review, the record does not sufficiently demonstrate that the petitioner has secured adequate premises to house the new U.S. operation. The regulations specifically require, as evidence for an individual petition, that the petitioner submit any evidence, as the director, in his discretion, may deem necessary. See 8 C.F.R. § 214.2(l)(3)(viii). In the present matter, although requested by the director, the petitioner failed to submit a lease agreement that described the leased premises as anything other than a residential apartment. Rather, the petitioner submitted a letter from the lessor indicating that the rented space was to be used as a warehouse and showroom. The lessor did not address or clarify the terms of the lease that restrict the use of the apartment to

residential. The petitioner failed to provide evidence specifically requested by the director, which would clearly establish adequate premises for a warehouse and showroom. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14).

An additional inconsistency exists in that both the petitioner and the lessor indicated the same address as its office or place of residence on documents in the record. The lessor, in his written statement, identified in the return address field of his letter that his real estate corporation was located at the same address as the petitioner's claimed place of business. There is no information in the record that this address consists of apartments or separate suites. The petitioner did not provide any explanation for this discrepancy. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As such, the petitioner has not demonstrated that it has obtained sufficient premises to house the new U.S. office.

The second issue in this proceeding is whether the beneficiary was employed abroad for one year in the three years preceding the filing of the petition 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 stated in a letter accompanying the petition that the beneficiary was employed as a marketing manager in the foreign company since 1996. While in this position, the beneficiary:

[M]ade independent executive decisions to organize various marketing campaigns, established goals and policies of our marketing department and sales departments, exercised wide latitude in discretionary decision-making and received only general minimal supervision from the managing director. [The beneficiary] supervised all the showroom managers who were reporting to the Sales Manager, who was counseled by the Marketing Manager as to what effective areas to target for sales, what kind of product differentiation and methodology to ascertain consumer demand and provide viable alternatives to varying income level markets for furniture [sic].

The petitioner also submitted an organizational chart for the foreign company in which the beneficiary was named as a "level two" marketing manager underneath the division manager. No employees were identified as being subordinate to the beneficiary.

The director requested that the petitioner submit a detailed statement describing the specific duties of the beneficiary's qualifying employment abroad, including a breakdown of the number of hours devoted to each of the beneficiary's job duties and a discussion of the managerial and executive duties. In addition, the director asked for the number, names, job titles, job duties, and minimum educational requirements of the beneficiary's subordinates abroad. The director also requested that the petitioner provide additional documentation to demonstrate the current staffing of the foreign corporation.

In response, the petitioner provided a statement of the beneficiary's daily job duties abroad, which included visiting the office factories, showrooms, and warehouses in the morning, and meeting with agents, distributors, brokers, and bankers in the afternoon. As marketing manager, the beneficiary ensured that the unit managers and executives had complied with the company policies, and that the products were sold in a manner consistent with the marketing plans. He also traveled throughout Thailand to meet with various manufacturing units, trade organizations, and key government officials to discuss economic trade policies with respect to the type of business performed by the foreign organization.

The petitioner also described the beneficiary's position in the organizational hierarchy as "under the division manager and supervises [the] sales manager, a top level executive, who supervises [the] Section Manager who supervises [five] showroom managers . . . . This shows that [the beneficiary] is on nine levels of higher authority than any Showroom Manager, thus being the highest level executive-manager in marketing." The organizational chart submitted by the petitioner identifies the beneficiary directly subordinate to the division

manager, and on the same level as the sales manager, production manager, product storage and delivery manager, and the general manager. Again, there were no employees listed as being subordinate to the beneficiary. On an attached page, the petitioner noted that the beneficiary's subordinate is a general secretary, who has a bachelor's degree in money and banking, and performs document filing, printing letters and reports, and inputs data into the computer for analysis.

The director concluded that the petitioner had failed to demonstrate that the beneficiary had been employed abroad as a manager or executive. The director noted that although the company president indicated that the beneficiary's duties as marketing manager involved general oversight of the company's marketing program and supervision of a sales manager and five showroom managers, the additional evidence in the record did not corroborate these statements. The organizational chart indicated that the beneficiary does not supervise any employees. On a separate paper, the petitioner identified one subordinate, a general secretary. Although this employee possesses a bachelor's degree, he is not employed in a professional position. The director concluded that while the beneficiary has a managerial title, he is actually performing all of the foreign company's marketing duties.

On appeal, counsel refers to the organizational chart submitted in the petitioner's response for additional evidence as evidence of the beneficiary's position in the foreign company's hierarchy. Counsel also submits a new organizational chart, which, he asserts, has "greater focus on [the] hierarchy." In the new organizational chart, the beneficiary is again identified as a level two marketing manager. However, contrary to the information on the previously two submitted organizational charts, the beneficiary is identified as having five subordinates: a secretary, a marketing research employee, a foreign exhibition manager, a foreign sales manager, and an advertising and art work employee. School transcripts identifying each subordinate possessed a baccalaureate degree are also submitted.

The AAO will adjudicate this issue based on the evidence available to the director at the time of his review. It is an established rule that the AAO does not consider new evidence on appeal where the petitioner was put on notice of evidentiary requirements and given a reasonable opportunity to provide it for the record before the petition was adjudicated by the CIS. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). In the present case, the petitioner was notified by the director in his request for evidence that additional documentation was necessary to determine whether the beneficiary had been employed abroad in the requisite capacity. The petitioner failed to provide the more detailed organizational chart, which it subsequently submitted on appeal. As this evidence was previously available to the petitioner and directly requested by the director, it will not be considered on appeal. *Id.*

On review, the petitioner has failed to provide sufficient evidence to substantiate that the beneficiary had been employed abroad in a primarily managerial or executive capacity.

As addressed by the director in his decision, the record contains many inconsistencies in regards to the beneficiary's position abroad. In a letter accompanying the petition, the petitioner stated that the beneficiary "supervised all showroom managers who were reporting to the Sales Manager," and counseled the sales manager. Yet, the organizational chart reflected that the sales manager and the beneficiary were on an equal level in the organizational hierarchy, and that the five showroom managers were subordinate to the sales manager only. When asked for additional information and clarification, the petitioner submitted the same job description and organizational chart. Attached to the organizational chart was a typed page which stated that the beneficiary's one subordinate in the foreign company was a general secretary who filed documents,

printed reports and letters, and input data into the computer for analysis. The petitioner did not submit evidence, or even address its previous assertion, that the beneficiary also supervised the showroom managers, or advised the sales manager. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, the petitioner has not provided a sufficient in-depth description of the beneficiary's job duties to conclude that the beneficiary has been or will be employed in a managerial or executive position. When examining the managerial or executive capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner provided the same job description for the beneficiary in both its first letter submitted with the petition and the June 29, 2002 letter submitted with its response to the director's request for evidence. In each, the petitioner stated that the beneficiary "made independent executive decisions," "established goals and policies of [the] marketing and sales departments," "exercised wide latitude in discretionary decision-making," and "received only general minimal supervision from the managing director." These statements are essentially a restatement of the phrase managerial capacity, as defined in the regulations. The petitioner has failed to specifically identify how the beneficiary's previous daily activities qualify him as a manager or executive. Simply 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).

Additionally, the petitioner failed to respond to the director's request for additional evidence. The director specifically requested "a detailed statement describing the [beneficiary's] specific duties" in the foreign company. Although given an opportunity to provide more detailed information regarding the beneficiary's employment abroad, the petitioner submitted verbatim the same job description. Failure to submit the requested evidence which precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14).

Furthermore, the record does not establish that the beneficiary is supervising other supervisory, professional or managerial employees, has the authority to hire, fire or recommend personnel actions for any employees, or has discretion over the day-to-day operations of the marketing department. According to the information submitted by the petitioner in its response to the director's request for evidence, the beneficiary's one subordinate employee is a general secretary. Although this individual has a baccalaureate degree, he is not considered to be a professional. The term profession is defined in section 101(a)(32) of the Act and includes, but is not limited to architects, engineers, lawyers, physicians, surgeons, and teachers of elementary or secondary schools, colleges, academies, or seminaries. Additionally, as provided in 8 C.F.R. § 204.5(k)(2), the term "profession" includes not only one of the occupations listed in section 101(a)(32) of the Act, but also any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. The position of a general secretary, which includes filing, typing, and printing reports does not necessitate a baccalaureate degree. Therefore, the beneficiary's only subordinate employee cannot be considered a professional, as that term is defined in the regulations. The petitioner has failed to demonstrate that the beneficiary supervises other supervisory, managerial, or professional employees.

The petitioner has also failed to establish that the beneficiary has authority over the day-to-day activities of the marketing department. Rather, it appears from the record that the only individuals performing any

marketing-related functions are the beneficiary and his secretary. As the secretary has been described as performing only administrative functions for the beneficiary, it can only be assumed, and has not been proven otherwise, that the beneficiary is performing all other marketing functions, including devising marketing plans, contacting advertisers, and performing any public relations. The beneficiary's job duties include non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has failed to demonstrate that the beneficiary was employed abroad in a primarily managerial or executive capacity.

The next issue in this proceeding is whether the new U.S. office will support a managerial or executive position within one year of the approval of the petition.

In a letter submitted with the petition, the petitioner stated that while employed in the United States the beneficiary would plan, organize, direct, and control the company's marketing functions. He would also appoint distributors, hire sales personnel, and provide assistance in sales and distribution. An organizational chart of the U.S. company identified the beneficiary as the sales manager, reporting directly to the chairman, and supervising one salesman and a product service employee.

The director requested additional evidence including a detailed business plan for the new U.S. company, a list of current employees and a detailed description of their job duties, a detailed description of the beneficiary's job duties as marketing manager, and copies of the year 2001 corporate tax return and Employer's Quarterly Tax return.

In response, the petitioner declared that the beneficiary would "hire, train and supervise sales managers, technical support people, and sales staff." The petitioner asserted that as the company expands, it anticipates hiring individuals to work in the finance and accounting departments, and the warehouse and showroom. The petitioner also referred to the business plan as evidence that it will employ managerial staff, which will allow the beneficiary "to do full justice to his marketing manager job."

In the business plan submitted by the petitioner, the beneficiary's job duties are described as:

Perform[ing] duties necessary to develop and upkeep [sic] marketing strategies, campaigns, promotional programs and strategies and develop jointly with top management [the] business strategy, long-term plans, management and business know-how.

The petitioner also stated that it anticipates hiring other staff if warranted by the business functions. Such staff will be for the manufacturing and accounting departments, and others will be "trained to optimize all operations."

The director concluded that the petitioner did not demonstrate that the beneficiary would be employed in a primarily managerial or executive position within one year of the approval of the petition. The director noted that the petitioner submitted copies of its recent tax returns, which showed that they had no current employees. The director also determined that it was unclear from the record how many employees would be

hired in the future to accomplish the business goals outlined in the business plan. As such, the director concluded that the scope and nature of the petitioning business did not warrant the services of the beneficiary in a managerial capacity within one year. Rather, it appeared that the beneficiary would perform the marketing, sales, and general administrative work of the U.S. operation.

Counsel fails to address on appeal the managerial or executive nature of the beneficiary's position in the United States.

On review, the petitioner has not demonstrated that the U.S. operation will support a managerial or executive position within one year of the approval of the petition. As stated earlier, in examining the managerial or executive capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner has not submitted a detailed description of the proposed duties to be performed by the beneficiary in his role as marketing manager. The petitioner merely explained that the beneficiary will develop and maintain marketing strategies, campaigns, and promotional programs, and work with upper management to identify the company's long-term goals. It is impossible to ascertain from this vague description exactly what daily activities the beneficiary will perform, and how these duties will amount to a managerial or executive capacity within one year. Simply 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, supra.*

In addition, the petitioner failed to mention any plans to develop a marketing department or hire employees for the department. The tax documents provided by the petitioner verify that the petitioner does not currently have any employees. The petitioner stated that it anticipates hiring managerial staff so that the beneficiary can function solely as a marketing manager. The petitioner also repeatedly made reference to its business plan as verification of its future hiring plans. Yet, upon review of the business plan, the petitioner has not identified an intent to employ any individuals within the first year that will relieve the beneficiary from performing non-qualifying functions of the marketing department. The petitioner specifically stated in the business plan that it anticipates hiring individuals for the finance, manufacturing and accounting departments only. Any other employees hired within the first year will be dependent upon "vital," yet unexplained, business functions. The AAO cannot assume without further evidence that the beneficiary will be relieved from performing all functions of the marketing department, including non-managerial and non-executive duties. Again, simply 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, supra.* Moreover, 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, supra.*

For the foregoing reasons, the petitioner has failed to demonstrate that the new U.S. office will support a managerial or executive position within one year of the approval of the petition.

The remaining issue in this proceeding is whether the petitioner has established the financial ability of the foreign entity to remunerate the beneficiary and commence doing business in the United States.

In regards to this issue, the director requested that the petitioner submit bank statements for the foreign and U.S. companies that reflect funds available for the months of February through April 2002. The director also

requested copies of any bank wire transfers and Customs Forms 4790, which would document the transfer of these funds from the foreign entity.

The petitioner submitted bank statements for the months of July 2001 through January 2002, the year 2001 Income Tax return for the foreign company, the foreign company's balance sheet and profit and loss statement, a bank letter, and deposit and withdrawal records.

In his decision, the director concluded that the petitioner did not submit substantial evidence to establish the financial ability of the foreign company to remunerate the beneficiary. The director noted that although the record reflects a transfer in the amount of \$99,983.00 to the U.S. company from a foreign bank, \$90,000 of the funds were withdrawn from the petitioner's account the following month. Furthermore, the most recent statement for the petitioning organization indicated a cash balance of approximately \$2,000, while the foreign company's bank statement reflected an approximate balance of \$4,000.00. The director determined that the two companies had insufficient funds to pay the beneficiary's annual salary of \$40,000, and to commence operations in a manner that will allow the U.S. company to grow to a sufficient capacity to support a managerial or executive position within one year.

On appeal, counsel asserts that the director misunderstood the financial statements in concluding that the foreign company had a loss in 2001 of approximately \$453,000.00. Counsel explains that this was a deduction, rather than a loss, which had been offset by an equivalent tax deduction resulting in zero tax liability. Counsel also asserts that a previous cash transfer of \$90,000 from the foreign company to the U.S. company is evidence of the petitioner's intentions to operate a bona fide business in the United States. Counsel also noted that an additional transfer of approximately \$100,000 was made to the U.S. company on September 24, 2002.

On review, the record does not support a finding that the U.S. organization has the financial ability to remunerate the beneficiary and commence doing business. The AAO acknowledges the transfer of approximately \$99,000 to the petitioner's business checking account from an account held by two individuals at the Bank of China. However, as addressed by the director, the bank statements clearly show that \$90,000 was withdrawn from the petitioner's checking account on July 2, 2001, leaving a balance of approximately \$5,000. There is no evidence of the money being deposited into another account held by the petitioner, or records identifying whether the money is still available to the company. 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).

Counsel also asserts on appeal that a transfer of approximately \$100,000 from the foreign company was more than adequate to cover advertising costs, wages, and other expenses of the petitioning organization. As noted above, this transfer was made in September 2002, four months after the petition was filed. Counsel fails to recognize the requirement that the petitioner establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, the foreign company's subsequent transfer of funds is insufficient to establish the financial position of the U.S. company.

Beyond the decision of the director, a remaining issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the petitioning entity and a foreign entity pursuant to

8 C.F.R. § 214.2(l)(1)(ii)(G). The regulations and case law confirm that the key factors for establishing a qualifying relationship between the United States and foreign entities are ownership and control. *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 (BIA 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct and 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*, *supra* at 595. In the present matter, the petitioner stated that the U.S. company is a subsidiary of the foreign corporation, and submitted a stock certificate identifying the foreign company as the holder of twelve shares of the petitioning company's stock. A wire transfer, submitted by the petitioner as evidence of the foreign company's ownership of the U.S. entity, indicates that the funds were transferred from two individuals, rather than the beneficiary's foreign employer. It remains to be determined whether the beneficiary's foreign employer actually funded the petitioning organization. As the appeal will be dismissed on other grounds, this issue need not be further addressed.

For the foregoing reasons, the petition cannot be granted.

In visa petition proceedings, the burden of proving eligibility for the benefit sought rests 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.