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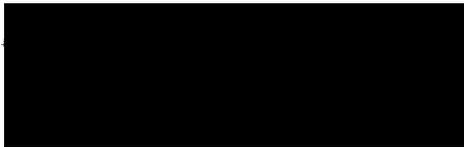
File: SRC-03-116-50048 Office: TEXAS SERVICE CENTER Date:

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 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, Texas 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 filed this nonimmigrant petition seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Florida that is engaged in the import and export business. The petitioner claims that it is the affiliate of [REDACTED] located in Sao Paolo, Brazil. The petitioner seeks to employ the beneficiary as its General Manager for a period of three years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the record shows that the beneficiary will be employed in a managerial or executive capacity. Counsel states that the director improperly focused on payroll amounts of the petitioner's employees, and the director's conclusion that the beneficiary would be a first-line supervisor is not supported by the submitted evidence. In support of these assertions, counsel submits a brief.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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) 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 (l)(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.

The primary issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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.

In the initial petition, the petitioner stated that the beneficiary's duties involve "[managing the] general business of [the] company, [including] hiring and firing decisions, policy decisions, etc." The petitioner

submitted an organizational chart, reflecting that the beneficiary will supervise two individuals, one with the title "Sales and Marketing," and one with the title "Administration." In an attached letter dated March 12, 2003, the petitioner further described the beneficiary's job duties as follows:

[The beneficiary] will join [the petitioner] on a temporary assignment to fill the position of general manager. In this position, he will be responsible for managing the general business of the company, including formulating and implementing policies to fully develop the company's potential and improve its profitability, negotiating and entering into contracts, making all hiring and firing decisions, coordinating the work of outside contractors; formulating and implementing marketing strategies and promoting the company.

On April 1, 2003, the director requested additional evidence. Specifically, the director requested: (1) copies of the petitioner's Forms 941 with attachments for the fourth quarter of 2002 and the first quarter of 2003; (2) an audited financial statement for 2002 or a copy of the corporate federal tax return if available; (3) evidence that the petitioner is generating sufficient revenue to support a managerial position, including five documents each for the months of October, November, and December 2002, and January and February 2003; (4) five customs documents for each month, showing goods shipped into or out of the United States; and (5) documentary evidence of the beneficiary's one year of requisite employment in a managerial or executive capacity with the foreign entity, including copies of payroll records and an organizational chart.

In response, the petitioner submitted: (1) copies of Forms 941 for the fourth quarter of 2002 and the first quarter of 2003; (2) a copy of the petitioner's 2002 Form 1120, U.S. Corporation Income Tax Return; (3) a copy of an excerpt from the U.S. Department of State Foreign Affairs Manual; (4) copies of shipping documents; (5) a 2002 annual report for the foreign entity; (6) previously submitted documents; and (7) a statement from counsel. The statement from counsel provided that that petitioner has two employees, not four as referenced by the director's request for evidence. Counsel stated that the foreign entity will remunerate the beneficiary until the petitioner generates sufficient revenue, and that "the request of 'five documents for each month' is inapplicable to the nature of the petitioner's business." Counsel explains that:

The petitioner is developing a market in the US for products from Brazil. As such, its final stage of operations is to contact US retailers and enter into contracts for the supply of the product. Prior to the product actually being physically shipped to the US and sold to the US retailer, the product must first be marketed in the US to create and [sic] interest and the necessary steps for the legal importation of the products must be taken. . . . Only after that does the company receive actual revenues from the sale. In its first year of operations the petitioner has relied on funding from its Brazilian parent and as such cannot show five documents of revenue per month. The US company has just completed most of the startup stage and thus requires a managerial position to oversee the implementation of the import contracts, among other duties. . . . The US company has been providing the service of marketing Brazilian products to US companies for more than one year

Regarding the availability of import and export documentation, counsel further described the petitioner's operations as follows:

The petitioner is not a shipping company or an agent company. Again, the nature of the company is such that each product must first be introduced to the market and then imported into the US. The shipments are usually sent through a shipping company and are large, unless they are samples. In the case of samples, they are usually sent through Fed Ex or similar, where the shipping company retains the customs documentation. The large shipment would not be sent as often as five time [sic] per month.

Counsel finally requested that CIS "review the [evidence] in light of the fact that the US company is still essentially in its startup phase and needs [the beneficiary] to continue developing the company's operations." Counsel requested that "if BCIS finds that [the petitioner has not been doing business for one year] the petition be treated as a new office."

On July 8, 2003, the director denied the petition. Specifically, the director determined that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. The director noted that the petitioner's quarterly tax returns show a very small amount of compensation paid to its two employees, and the petitioner's 2002 Form 1120 annual federal tax return reflects revenue of \$5,683.01. The director found that the petitioner did not establish that it had the financial ability to support the beneficiary in a primarily managerial or executive capacity. The director further concluded that the beneficiary will be functioning as a first-line supervisor over employees whose professional credentials have not been established.

On appeal, counsel for the petitioner asserts that the director erred in her interpretation of managerial and executive capacity and erroneously classified the beneficiary's proposed position as a first-line supervisor. Counsel contends that the petitioner provided ample evidence to establish the executive nature of the position. In support of these assertions, counsel submitted a brief. In the brief, counsel argues that the petitioner should be treated as a new office, as it had been engaged in business activity less than one year as of the date of filing the present petition. Counsel states that the "Appellant's ability to support a managerial or executive position was an improper factor in [the] denial," and "[t]he Director is essentially arguing that small payroll amounts show that the company may not have been systematically providing goods or services for one year, yet will not acknowledge Appellant as a new office." Counsel further asserts that "[p]ayroll amounts paid to employees during the first year of operation are not alone indicative of the Appellant's ability to support a manager or executive position." By way of example, counsel cites 8 C.F.R. § 214.2(l)(14)(ii), and proffers that the petitioner's petition should be analyzed like a petition for an L-1A extension after a one-year initial period to open a new office. Counsel asserts that the director's conclusion that the beneficiary will be a first-line supervisor is not based on evidence in the record. Counsel further describes the beneficiary's role in the company as follows:

The beneficiary is both the President of the US corporation and its 95% owner. He is the 95% owner of the Brazilian affiliate. . . . He is responsible to no one but himself in both companies. The director's classification of the beneficiary as a first line supervisor is illogical considering there is no one above him on the hierarchical scheme. Furthermore, organizational charts were submitted which showed that the beneficiary's proposed

employment in the US would include supervising the employee(s) responsible for sales and marketing as well as the employee responsible for administrative duties. As such, the beneficiary's proposed position fully conforms with the Regulations' definition of Executive Capacity in that he manages all aspects of the organization, established goals and policies and has full discretion in all decision making, as well as no one to report to.

Upon review, counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In the instant case, the petitioner does not clearly state whether the beneficiary will perform managerial or executive tasks. Counsel refers to the position as an executive position, yet counsel discusses the beneficiary's supervisory responsibilities and managerial duties. Thus, it appears that counsel intends to represent that the beneficiary will be primarily engaged in both managerial duties and executive duties. Therefore, the petitioner must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive duties under section 101(a)(44)(B) of the Act, and the statutory definition for managerial duties under section 101(a)(44)(A) of the Act.

The job description submitted by the petitioner is brief and vague, providing little insight into the true nature of the tasks the beneficiary will perform. For example, the initial job description provides that the beneficiary "will be responsible for managing the general business of the company, including formulating and implementing policies to fully develop the company's potential and improve its profitability." On appeal, counsel states that the beneficiary "manages all aspects of the organization, established [sic] goals and policies and has full discretion in all decision making." These statements do not indicate what actual tasks the beneficiary will perform on a daily basis. The job description further states that the beneficiary's duties include "formulating and implementing marketing strategies," yet no indication is made as to how the beneficiary will accomplish this task. The AAO is unable to determine whether the beneficiary will perform the daily tasks necessary to implement the marketing strategies, or whether he will direct others to do so. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.* The provided job description does not allow the AAO to sufficiently determine the actual tasks that the beneficiary will perform, such that they can be classified as managerial or executive in nature.

Counsel indicates that the beneficiary will have supervisory responsibility over two employees. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages 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).

In the instant matter, the petitioner has not provided the level of education or experience required in order to perform the duties of the beneficiary's proposed subordinates. Thus, the AAO cannot determine whether they are professionals. The petitioner's organizational chart reveals that neither of these employees have subordinates of their own, thus they cannot be characterized as supervisory employees. Further, the petitioner has not described their duties such that the AAO can assess whether they have managerial responsibility over a particular department or function of the petitioner's operation, such that they could be deemed managerial employees. 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). Accordingly, the petitioner has not established that the beneficiary's subordinates would be supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

As noted above, the director concluded that the beneficiary would be functioning as a first-line supervisor. A managerial or executive 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. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Counsel asserts that the director's conclusion that the beneficiary will be a first-line supervisor is not based on evidence in the record, and that such an assertion is illogical considering there is no one above the beneficiary on the hierarchical scheme. Counsel's assertions are not persuasive. In assessing whether a beneficiary is a first-line supervisor, the AAO will analyze his subordinates, not his superiors. A first-line supervisor is an employee who directly supervises subordinates without the presence of intermediate supervisors. In examining the petitioner's organizational chart, it is apparent that the beneficiary would directly supervise two employees with the titles "Sales and Marketing" and "Administration." Neither of these two employees have subordinates of their own, thus the beneficiary would be a first-line supervisor. As discussed above, the petitioner has not established that the beneficiary's first-line subordinates would be supervisory, professional, or managerial. See *Matter of Church Scientology International*, 19 I&N Dec. at 604. The fact that the beneficiary would be a first-line supervisor undermines a finding that he would be employed in a primarily managerial or executive capacity. *Id.*

Counsel states that the "Appellant's ability to support a managerial or executive position was an improper factor in [the] denial." Counsel asserts that the "[t]he Director is essentially arguing that small payroll amounts show that the company may not have been systematically providing goods or services for one year." Counsel further asserts that "[p]ayroll amounts paid to employees during the first year of operation are not

alone indicative of the Appellant's ability to support a manager or executive position." Counsel provides an excerpt from the U.S. Department of State Foreign Affairs Manual (titled "Source of Remuneration and Benefits Not Controlling," 9 FAM 41.54 N9.1) to stand for the proposition that the foreign entity can properly provide remuneration for the beneficiary without undermining a finding that the petitioner can support the beneficiary in a primarily managerial or executive capacity.

The AAO will discuss the concept of whether the petitioner can *support* the beneficiary in a primarily managerial or executive capacity in two parts. First, the AAO will address the matter of whether the petitioner can financially support the beneficiary, that is, whether the petitioner possesses the ability to pay the beneficiary's offered salary. Counsel correctly asserts that the foreign entity can properly remunerate the beneficiary, and that the petitioner does not have the burden to show that it will provide 100 percent of the beneficiary's benefits and compensation. Thus, whether the petitioner can or will provide the full compensation for the beneficiary is not at issue in this proceeding.

Second, the AAO will address the matter of whether the petitioner can support the beneficiary in a primarily managerial or executive capacity, that is, whether the petitioner's operations are sufficiently developed and staffed such that the beneficiary will be primarily performing managerial or executive tasks. In this context, the director properly raised the issue of the size and staffing of the petitioner's operation. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. CIS must assess the needs of the petitioner's operations to determine what tasks the beneficiary and other employees will be required to perform. In the present matter, the petitioner provides that its primary function is to market the foreign entity's products in the United States. This requires the petitioner's employees to "contact US retailers and enter into contracts for the supply of the product." Thus, it is apparent that the petitioner requires employees to perform numerous non-managerial and non-executive tasks such as calling or visiting customer sites to introduce products, researching and identifying potential customers, arranging for shipping of samples, tracking sales, and creating and explaining sales contracts. The petitioner also requires employees to perform routine functions such as paying utility bills, answering general correspondence, performing accounting and bank account management, and answering telephones.

The director highlighted that the petitioner's documentation reflects that it pays little compensation to its two employees. Specifically, the director noted that, in the quarter ending March 31, 2003, the two employees were paid \$1,230.00 and \$1,130.50 respectively, while in the previous quarter, they were paid \$1,200 and \$1,100. These figures are significant, as they reflect that each of these employees are part-time, earning approximately \$5,000 per year. In light of the significant non-managerial and non-executive tasks that must be performed to carry out the petitioner's operations, it appears that these two part-time employees will not be sufficient support to relieve the beneficiary from performing substantial non-managerial and non-executive duties. The director noted that the petitioner's revenue in 2002 was \$5,683.01. This low amount of revenue is significant, as it reflects that the petitioner possesses limited means with which to hire additional staff or increase its operations such that the beneficiary can devote the majority of his time to managerial or executive tasks. Further, while counsel asserts that the foreign entity can properly contribute to the payroll costs of the petitioner, the record contains no evidence to support that the foreign entity is contributing to the wages of the

petitioner's two current workers. 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).

Accordingly, the petitioner's small revenue and low compensation to its existing workers call into question whether the petitioner can support the beneficiary in a primarily managerial or executive capacity as defined in section 101(a)(44)(B) and section 101(a)(44)(A) of the Act.

Counsel cites 8 C.F.R. § 214.2(l)(14)(ii), and proffers that the petition should be analyzed as if it were a petition for an L-1A extension after a one-year initial period to open a new office. Counsel implies that the petitioner should not be required to show a consistent stream of business and wages throughout the one-year period prior to filing the petition, as it was in a start-up phase like a new office. The AAO notes that the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, the petitioner must show that it can support the beneficiary in a primarily managerial or executive position as of the filing date, in the instant matter March 18, 2003. As discussed above, the petitioner's prior staffing level and operations are considered for the purpose of determining whether the petitioner could support the beneficiary in a primarily managerial or executive capacity on March 18, 2003. Counsel's assertion is not persuasive.

Counsel further asserts that the petitioner may be considered a new office, and that the petition may be adjudicated according to the regulations governing a petition for a one-year initial period in L-1A status to open a new office. However, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). In the present petition, the petitioner represented that it is not a new office. On Form I-129, the petitioner indicated that it was established in 2001, while the petition was filed on March 18, 2003. On Form I-129 Supplement E/L, the petitioner indicated that the beneficiary is not coming to the United States to open a new office. The petitioner may not now change its representation to reflect that the beneficiary will open a new office, in order to make the deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 176. If the petitioner wishes to have a petition considered under the regulations governing new offices, it may file a new petition with CIS clearly indicating the relevant facts.

Based on the foregoing, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3). For this reason, the appeal will be dismissed.

Beyond the decision of the director, counsel has not established that the beneficiary was employed abroad in a primarily managerial or executive capacity as required by the regulation at 8 C.F.R. § 214.2(l)(3)(iv). With the exception of a brief sentence describing the beneficiary's duties abroad, the petitioner has offered no account of the specific tasks the beneficiary performed for the foreign entity. While the petitioner submitted an organizational chart for the foreign entity, it has offered no explanation of the beneficiary's management of or interaction with the other employees listed. Further, the petitioner has not provided an explanation of the education, experience, and duties of the beneficiary's subordinates abroad such that the AAO can determine whether they were supervisors, managers, or professionals. Thus, the petitioner has not established that the

beneficiary has been employed abroad in a primarily managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(iv). For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that it has a qualifying corporate relationship with the beneficiary's foreign employer as required by 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner indicated that it had an affiliate relationship with the foreign entity based on common majority ownership by the beneficiary. As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control. While the petitioner submitted its articles of incorporation, the document does not address the voting of shares. The petitioner submitted stock certificates, reflecting that the beneficiary was issued an apparent 95 percent interest in the company on March 15, 2001, but the petitioner has not provided a stock ledger such that the AAO can assess whether the ownership or control of the company has changed since that date. 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. at 190. On the initial petition, the petitioner indicated that it is the affiliate of the beneficiary's foreign employer, as both entities are 95 percent owned by the beneficiary. However, the petitioner's 2001 and 2002 Forms 1120 state that the beneficiary owns 100 percent of the petitioner's stock. The petitioner has offered no explanation for this inconsistency, which calls into question the current ownership of the company. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Thus, the petitioner has not submitted sufficient evidence to establish its current ownership.

Further, the petitioner has not submitted supporting evidence to establish the ownership of the foreign entity. The petitioner submitted numerous untranslated documents pertaining to the foreign company. If translated, these documents may shed light on the ownership of the company. However, because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Thus, the record is insufficient to show a qualifying corporate relationship. For this additional reason, the appeal will be dismissed.

In visa proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.