

attempt to deny rights to  
petitioner  
invasion of personal privacy



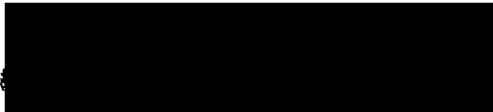
U.S. Citizenship  
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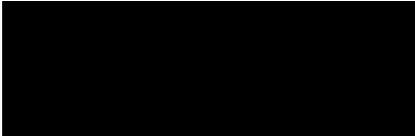
File: SRC-99-122-50393 Office: TEXAS SERVICE CENTER Date:

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 employ the beneficiary as its Manager – Air Freight Department 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 Texas that operates as an international freight forwarder. The petitioner claims that it is the affiliate of Clover International, C.A., located in Caracas, Venezuela.

The director denied the petition concluding that (1) the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity, and (2) the petitioner did not show that it has a qualifying relationship with the beneficiary's foreign employer.

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 Citizenship and Immigration Services (CIS) erroneously based its decision on the small size of the petitioner, and that the record contains sufficient evidence to show that the beneficiary will be employed in a primarily managerial or executive capacity. Counsel further asserts that the evidence of record clearly demonstrates a subsidiary-parent relationship between the petitioner and the foreign entity. 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 first 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 will “[o]versee the Air Freight Department of [the petitioner].” In a cover letter, counsel stated that the beneficiary “will continue to work in a capacity that is managerial in nature. He will organize, direct, and supervise the operations of the new enterprise. He will only receive general guidance from the General Manager and President of the company.” In an attached letter, the petitioner further described the beneficiary's job duties as follows:

The purpose of the transfer is to place [the beneficiary] in the position to manage, supervise, and operate with the assistance of a staff, the established business in the U.S. He will also be directing the training of U.S. employees who will be employed by the [petitioner] in the near future.

\* \* \*

The position involves the management of the business enterprise operations including:

1. The supervision of any current employees or future employees;
2. Training of employees (hiring and firing of employees to assist in the air freight shipping department);
3. Managing the finances of the air freight shipping department;
4. Planning, developing, and implementing company strategy in regards to air freight shipping;
5. Developing and implementing policies and procedures for company air freight shipping operations;
6. Determining mark-up percentages necessary to insure profit, based on estimated budget, and profit goals;
7. Developing policies and procedures for air freight shipping of goods;
8. Negotiating purchase contracts with air freight shipping companies;
9. Authorizing purchase of merchandise based on estimates;
10. Formulating pricing policies;
11. Reviewing bills of lading, invoices and insurance certificates;
12. Approving the air freight shipping budget for the company and determining allocation of funds;
13. Planning and implementing new operating procedures to improve efficiency and reduce costs in the air freight shipping department;
14. Overseeing air exports;
15. Provide U.S. clients with Logistics and advise in regards to custom procedures in Venezuela.

Level of Authority:

Highest managerial level of authority with the [petitioner] as Air Freight (Shipping) Department Manager. [The beneficiary] will supervise, train and hire and fire employees. Discretionary powers to operate the department.

On May 5, 1999, the director requested additional evidence. Regarding the beneficiary's proposed employment capacity, the director requested: (1) a copy of the petitioner's organizational chart; (2) an indication of who does the shipping and handling at the petitioner; (3) evidence of the petitioner's current staffing level, including position titles and duties of all employees, and the educational background of any professionals employed; and (4) an indication of the activities the beneficiary is currently engaged in.

In a response dated July 28, 1999, the petitioner submitted: (1) an organizational chart for the petitioner; (2) a letter indicating who does the shipping and handling at the petitioner; (3) a document titled "Employee Roster" that lists the petitioner's employees and provides their educational level and a brief phrase to describe their respective duties; (4) a letter describing the beneficiary's duties abroad with his foreign employer; and (5) a letter describing the beneficiary's proposed duties in the United States that repeats the information provided in the initial petition.

On August 19, 1999, the director denied the petition. In part, 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 stated that "[t]he petitioner has not submitted documentation in demonstrating the beneficiary will be performing duties which primarily require the beneficiary to plan, organize, direct and control the organization's major functions by working through other managerial or professional employees." The director noted that the record reflects that the beneficiary will supervise only one employee, a receptionist, and thus it appears that he will be a first-line supervisor.

On appeal, counsel for the petitioner asserts that CIS erroneously based its decision on the small size of the petitioner, and that the record contains sufficient evidence to show that the beneficiary will be employed in a primarily managerial or executive capacity. Counsel submits a brief, citing two United States District Court cases and two unpublished AAO decisions to stand for the proposition that a petitioner's small staff size cannot serve as the sole basis for denying the visa petition. Counsel further quotes the regulation at 8 C.F.R. § 204.5(j)(4)(ii) to show that CIS must consider the reasonable needs of the petitioner when using the petitioner's size and number of employees as a factor in a visa decision. Counsel asserts that CIS failed to adhere to this regulation by using the petitioner's size as the "primary base in denying the petition." Counsel further alleges that CIS failed to consider whether the beneficiary will be a function manager under 8 C.F.R. § 214.2(l)(1)(ii), which obviates the need for the petitioner to show that he will work through the supervision of other employees.

Counsel states that "[t]he duties that [the beneficiary] will perform are essential and controlling functions and are of a type contemplated by the statute for the position of manager and executive." Counsel asserts that the director did not adequately explain the conclusion that the beneficiary's duties largely consist of "the tasks necessary to produce a product or to provide services." Counsel indicates that the beneficiary meets the four elements of the definition of managerial capacity as provided in Section 101(a)(44)(A) of the Act. Specifically, counsel states that the beneficiary meets the first element because he "will be exercising the controlling and directing power over the business decisions, plans, strategy, and policies in the Air Freight Department of the company." Counsel adds that, "[b]ased on his own business judgment, [the beneficiary] will plan and implement the appropriate developing strategy for the Air Freight Department to allow its

expansion. [The beneficiary] will further use his extensive business experience and skills in management to ensure the competitiveness of the air freight services of the petitioner." Counsel states that the beneficiary meets the second element because he "will be overseeing and managing the air freight department which is an essential function from the establishment of the company." Counsel explains that, as the petitioner's business is to provide international freight forwarding services, "[t]he essential function for the business concern of this nature rests on the company's air and ocean freight departments . . . ." Counsel asserts that the beneficiary meets the third element because he "will . . . be functioning at 'senior' [sic] level within the company." Counsel explains that the beneficiary "has authority and discretion to hire or fire employees based on the development plan and business needs of the Air Freight Department." Counsel asserts that the beneficiary meets the fourth element because he "will not only have the power and discretion over how the Air Freight Department operates daily but also have authority over and manage the essential function of the business."

Counsel further provided that "an Air Freight Assistant will be hired and supervised by the [beneficiary] to deal with special shipping and handling under the direction of the [beneficiary]. During the transition period, a [REDACTED] Project Coordinator, will be helping the Air Freight Manager deal with shipping and handling."

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.* Further, whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. In the instant matter, the petitioner has submitted a list of the beneficiary's duties, and counsel has further discussed these duties in his brief. However, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as the "[t]raining of employees," "[r]eviewing bills of lading, invoices and insurance certificates," and "[providing] U.S. clients with Logistics and advise in regards to custom procedures in Venezuela" do not fall directly under traditional managerial duties as defined in the statute. They reflect that the beneficiary will, at least in part, perform tasks necessary to provide the petitioner's services. For this reason, the AAO cannot determine whether the beneficiary will be primarily performing managerial duties. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). 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).

Further, some of the duties listed for the beneficiary lack sufficient detail to determine what actual associated tasks the beneficiary will perform. For example, the petitioner provides that the beneficiary will "[implement] policies and procedures for company air freight shipping operations," and "[implement] new operating procedures to improve efficiency and reduce costs in the air freight shipping department." Yet, the petitioner

has failed to explain what tasks are involved with implementing these policies and procedures, whether the beneficiary will directly perform such tasks, or whether the beneficiary 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.* Some of the provided duties in the beneficiary's job description do not allow the AAO to determine the actual tasks that the beneficiary will perform, such that they can be classified as managerial or executive in nature.

Counsel asserts that the beneficiary should be considered a function manager, and that he is not required to perform his work through the use of subordinate employees in order to qualify for L-1A classification. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. Again, 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. at 604. As discussed above, in the present matter, the petitioner has not established what portion of the beneficiary's time will be committed to managerial tasks, and what portion will be devoted to non-managerial duties to directly provide the petitioner's services. Thus, the petitioner has not established that the beneficiary will be engaged primarily as a function manager.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* section 101(a)(44)(C), 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The petitioner has not provided a clear account of the reasonable needs of its business. While counsel has emphasized the value of the beneficiary's managerial contributions to the company, the petitioner has not indicated how it will meet its daily needs without the beneficiary performing substantial non-managerial tasks.

The petitioner operates as an international freight forwarder, offering transportation services by sea and air. The petitioner's organizational chart reflects that the beneficiary and a receptionist are the only two employees working on the Air Freight portion of the business. It is evident that the reasonable needs of the petitioner's Air Freight operations require employees to perform numerous non-managerial tasks such as answering shipping questions for customers by phone and in-person, taking shipping orders from customers, filling out forms to document orders, contacting sub-contractors for freight forwarding, tracking shipping projects in

progress, creating invoices and packing lists, stocking office supplies and maintaining office equipment, and providing custodial services. In response to the director's request for evidence of the petitioner's current staffing level, including position titles and duties of all employees, the petitioner indicated that the receptionist in the Air Freight department will "answer the phone/file/copy." Counsel provided that "an Air Freight Assistant will be hired and supervised by the [beneficiary] to deal with special shipping and handling under the direction of the [beneficiary]." However, the petitioner must 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). The fact that the petitioner intends to hire additional employees in the future does not support that the beneficiary was eligible for L-1A classification as of the date of filing the petition. Counsel further indicates that, "[d]uring the transition period, a [REDACTED] Project Coordinator, will be helping the Air Freight Manager deal with shipping and handling." However, this employee is not included on the petitioner's organizational chart, or in any other documentation. Other than counsel's statement, there is no record that the petitioner employs an individual by this name. 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). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, significant non-managerial duties are left unaccounted for, and it appears that the reasonable needs of the petitioner will require the beneficiary to perform these tasks. The petitioner has not met its burden to show otherwise.

Counsel refers to two United States district court cases and two unpublished AAO decisions. While counsel provided the holdings of the cited matters and indicated that they apply to the present matter, counsel has furnished no evidence or explanation to establish that the facts of the instant petition are analogous to those in the referenced cases. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. at 190. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Additionally, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Further, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

As counsel correctly stated, the beneficiary is not required to manage subordinate employees to qualify as a manager under section 101(a)(44)(A) of the Act. However, if it is claimed that a beneficiary's duties involve supervising employees, the AAO will examine whether the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

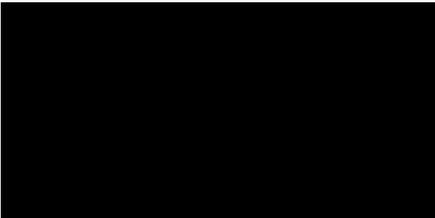
In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall 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).

The petitioner provides that the beneficiary will manage a receptionist. The petitioner has not established that this employee possesses or requires an advanced degree, such that this individual could be classified as a professional. Nor has the petitioner shown that this employee supervises subordinate staff members or manages a clearly defined department or function of the petitioner, such that the individual could be classified as a manager or supervisor. Thus, the petitioner has not shown that the beneficiary's subordinate employee will be supervisory, professional, or managerial, as contemplated by section 101(a)(44)(A)(ii) of the Act.

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

The second issue in this proceeding is whether the petitioner established that it has a qualifying relationship with the beneficiary's foreign employer as required by the regulation at 8 C.F.R. § 214.2(l)(3)(i).

In the initial petition, the petitioner indicated that it is the affiliate of the beneficiary's foreign employer, as the "[s]ame group of individuals own 100% ownership in substantially the same proportionate shares for both the foreign and United States company." In an attached letter, the petitioner identified the group of individuals who have an ownership interest in the two entities as follows:

	20%
	20%
	20 %
	20 %
	20 %

The petitioner further submitted a copy of its articles of incorporation, reflecting that the petitioner is authorized to issue 1,000,000 shares of stock. The petitioner provided a document, titled "Resolution of Extraordinary General Assembly of Shareholders of Clover Internacional C.A., Held 07 November 1994," that indicated that the shareholders of the foreign entity on that date were " duly representing 32000 shares of resuccessors of  Ceballos, and  owner of 8000 shares . . . ." The document stated that the founder of the foreign entity,  had suddenly died.

In her request for evidence, in part the director requested: (1) evidence that the foreign employer is currently engaged in business operations such as current financial records, tax returns, annual reports, profit and loss statements, other accountant reports, banking records, employee rosters, and evidence of business conducted including invoices, bills of sale, and product brochures of goods sold or produced by the company; and (2) documentary evidence to establish the ownership and control of the petitioner and the foreign entity, such as stock certificates, copies of corporate bylaws/constitutions which clearly indicate stock ownership, or copies of published annual reports which indicate affiliates and/or subsidiaries and the percentage of ownership held by the parent corporation.

In response, the petitioner submitted: (1) numerous untranslated documents purportedly pertaining to the foreign entity's business operations; (2) company brochures for the foreign entity; (3) a line and block chart illustrating that the petitioner is owned by the foreign entity through a holding company in Florida; (4) two stock certificates for 1,000 shares each, one of which is issued to Luis Angel Rincon and marked "VOID" and the other which is written to [REDACTED] and is mostly illegible; (5) a contract between the petitioner and [REDACTED] transferring all issued and outstanding shares of the petitioner to [REDACTED] on September 1, 1991; (6) a letter from the petitioner indicating that [REDACTED] is a wholly-owned subsidiary of the foreign entity, and that [REDACTED] owns 100 percent of the petitioner's stock; and (7) a second letter from the petitioner discussing its ownership. In the second letter from the petitioner, it states:

[REDACTED] is aware of the request for additional information by [CIS] regarding the L-1A petition for intracompany-transferees between [the foreign entity] in Venezuela and [the petitioner] in Houston. However, due to a highly confidential business purchasing plan, we are sorry that [the petitioner] is currently reducing to the minimum the exposure of the company's documents to outsiders.

In the denial, in part the director concluded that the petitioner did not show that it has a qualifying relationship with the beneficiary's foreign employer. Specifically, the director noted that the record contains conflicting information regarding the ownership and control of the petitioner and foreign entity. The director referenced documentation that indicates that the petitioner is owned by a group of individuals, and conflicting letters that report that the petitioner is owned a [REDACTED]

On appeal, counsel asserts that the evidence of record clearly demonstrates the subsidiary-parent relationship between the petitioner and the foreign entity. Counsel states that, "in its response to [CIS's] Request for Additional Evidence, [the petitioner] has amended its incorrect statement of the ownership of the U.S. company in its original declaration and submitted the stock certificates, stock transferring documents, and verification letters to prove the relationship between the U.S. company and the foreign company." Counsel asserts that the submitted documentation shows that the founder of the petitioner transferred all of the shares of the company to [REDACTED] on September 1, 1991. Counsel states that the petitioner's letters regarding the ownership of [REDACTED] Systems are sufficient to establish that it is wholly-owned by the beneficiary's foreign employer. Counsel alleges that the director unduly focused on the document titled "Resolution of Extraordinary General Assembly of Shareholders of [REDACTED] C.A., Held 07 November 1994" that indicated that the shareholders of the foreign entity were [REDACTED]

██████████ duly representing 32000 shares of resuccessors of ██████████  
██████████ owner of 8000 shares . . . ." Counsel asserts that "[CIS] . . . ignored the entirety of the documents submitted by the petitioner and made a decision based on its own assumptions and misconstruction of evidentiary documents submitted by the petitioner. This decision, thus, borders on maliciousness and a misuse of authority."

Upon review, counsel's assertions are not persuasive. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

Further, the regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include stock certificates, copies of corporate bylaws or constitutions which clearly indicate stock ownership, or copies of published annual reports which indicate affiliates and/or subsidiaries and the percent of ownership held by the parent corporation. Additional supporting evidence would include monies, property, or other consideration furnished to the entity in exchange for stock ownership, stock purchase agreements, subscription agreements, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

In the instant matter, the petitioner indicated that it is a wholly-owned subsidiary of the foreign entity through a holding company, ██████████. To show that ██████████ acquired 100 percent ownership of the petitioner's outstanding shares, the petitioner provided two stock certificates for 1,000 shares each and a contract between the petitioner and ██████████, transferring all issued and outstanding shares of the petitioner to Clover Systems on September 1, 1991. One of the stock certificates, reflecting 1000 shares issued to ██████████, is barely legible and therefore has little evidentiary value in these proceedings.

The other stock certificate, reflecting 1000 shares issued to [REDACTED] is marked "VOID" and therefore does not serve as evidence of current ownership. These documents, in aggregate, suggest that [REDACTED], Inc. acquired 1000 shares of the petitioner on September 1, 1991. Yet, the petitioner has submitted no evidence to show the ownership status of its outstanding stock during the seven-year period between this transaction and the filing of the present petition. As the petitioner's articles of incorporation indicate that it is authorized to issue 1,000,000 shares, the petitioner's accounting for 1,000 shares in 1991 clearly does not serve as sufficient evidence to show ownership and control as of March 15, 1999. While counsel references letters from the petitioner as evidence of its ownership and control, such letters do not meet the petitioner's burden to provide independent, objective documentary evidence, particularly when acceptable documents have been identified and requested by the director. 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. While counsel alleges that a qualifying relationship exists, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

While the petitioner claims that [REDACTED] is a wholly-owned subsidiary of the foreign entity, the petitioner has provided no documentary evidence to show the ownership and control of [REDACTED] beyond its own statements. 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.

To account for its lack of evidence of a qualifying relationship, the petitioner submitted a letter stating that "due to a highly confidential business purchasing plan, we are sorry that [we are] currently reducing to the minimum the exposure of the company's documents to outsiders." It is for the petitioner to determine whether its confidentiality concerns outweigh the need to submit documentation in order to employ the beneficiary in L-1A status. However, if the petitioner chooses to pursue L-1A classification for the beneficiary, the burden remains on the petitioner to show that it has a qualifying relationship with the beneficiary's foreign employer. See section 291 of the Act, 8 U.S.C. § 1361. The director provided a list of possible documents to show a qualifying relationship, from which the petitioner could have chosen those most appropriate to balance its interests. Yet, from the list the petitioner elected only to provide two stock certificates discussed above, which are inadequate. The petitioner's confidentiality concerns do not relieve it from the burden to establish the ownership and control of both the petitioner and the beneficiary's foreign employer. Here, that burden has not been met.

The regulation at 8 C.F.R. § 214.2(l)(ii)(G)(2) reflects that, in order for an entity to be considered a qualifying organization, the petitioner must show that it:

Is or will be doing business (engaging in international trade is not required) as an employer in the United States and 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 . . . .

The regulation at 8 C.F.R. § 214.2(l)(ii)(H) defines the term "doing business" as:

[T]he 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.

As provided above, the director requested that the petitioner provide evidence that the foreign employer is currently engaged in business operations. In response, the petitioner submitted numerous untranslated documents purportedly pertaining to the foreign entity's business operations, as well as company brochures. Because the petitioner failed to submit certified translations of numerous 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. Company brochures alone are not sufficient to establish that the foreign entity is engaged in "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(ii)(H). Thus, the petitioner has failed to establish that the foreign entity can be considered a qualifying organization as contemplated by 8 C.F.R. § 214.2(l)(ii)(G)(2).

Counsels alleges that "[CIS] . . . ignored the entirety of the documents submitted by the petitioner and made a decision based on its own assumptions and misconstruction of evidentiary documents submitted by the petitioner." Yet, given the significant lack of acceptable evidence discussed above, the director's brief analysis was accurate and appropriate. Counsel's assertion that "[t]his decision . . . borders on maliciousness and a misuse of authority" is unfounded.

Based on the foregoing, the petitioner has not established that it has a qualifying relationship with the foreign entity as defined in the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G). 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.